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MINISTER OF DAILLY.

EDINBURGH:

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PREFACE.

UNDUE importance may be attached to forms, and nothing is more pitiable than a mind which is wholly engrossed with their minute observances. But forms are treated unjustly when contempt is poured on them, and when they are held to be of no importance. They are necessary for the orderly conducting of business, and inseparable from it. Let the attempt be made to dispense with them, and either it will be found impossible to proceed, or, unconsciously on the part of those who have made the attempt, recourse will be had to forms of some kind or other. They are necessary even for attaining the ends of justice, or promoting the general good. When there is no fixed mode of procedure, and questions are taken up at will, parties labour under great disadvantages in bringing forward their cases; they have nothing to secure them against the ca-

price or arbitrary pleasure of their judges; and there is much danger of decisions being given inconsiderately, and under the influence of the feelings of the moment. The fickleness and impatience of our nature require to be continually checked, and induce us, if unrestrained, to adopt partial views, and to come to sudden and ill-formed conclusions respecting both individual interests and matters of public and general concern. Were it not for the delays occasioned by the forms of our courts, and the cool and dispassionate analysis to which every new proposal is subjected in its passage through the inferior judicatories of the church, how easy would it be to take advantage of the excited feelings of a popular assembly, and to introduce measures subversive of our ecclesiastical constitution? Capable of much improvement as the form of process is admitted to be, it is nevertheless the palladium of ministerial character, securing it against idle and groundless attacks, and placing it out of reach of being causelessly injured; and irksome as the observance of our ordinary forms may be, it is very much owing to a strict attention to these that any thing like consistency appears in the decisions of our ecclesiastical courts, and that they have maintained their respectability for upwards of 200 years.

It is not creditable to the office-bearers, and

particularly to the ministers of the church, to be ignorant of its forms of proceeding. They have pledged themselves to uphold its present government and discipline. They are called to preside in its courts. They have frequently to deliberate and vote for its interests; and whether they take an active part in the business of the higher courts or not, they have duties to perform in their kirk-sessions which make some acquaintance with the constitution and the forms of our church altogether indispensable.

A regular attendance on the church courts is, without doubt, the most effectual means of attaining to an acquaintance with their forms. But that regular attendance it is not possible always, or in all situations to give. Other means must therefore be applied to. Compilations of the acts of Assembly arranged under different heads, which have been published from time to time, are extremely useful. There is a compend of the laws of the church at present in the course of publication, which contains not only the Acts of Assembly, but also a reprint of various books or treatises connected with our church, which are now scarcely to be had. Among others there is Pardovan, so long the text book, as it were, of ministers in all matters of government and of discipline. But even Pardovan, useful as it was, required to be remodelled. There is much in it that is

superfluous, and a good deal in which, in modern times, it is deficient. The present little work is offered as a manual instead of Pardovan. Its object is to detail minutely and briefly the proceedings of the different courts in our ecclesiastical establishment. The simplest arrangement has been adopted for this purpose; and the utmost pains have been employed to prevent repetitions, and to compress the information that is given into the smallest compass. Marginal notes and an index are given to make it easy to refer to any particular topic. Should the work be useful, the author will gratefully receive any suggestions respecting its arrangement, or the omissions which he has made in it. For, however desirous he has been to be accurate in his information, he cannot presume to think that those who are still better acquainted than himself with the subjects of which he treats, will not discover many defects in his work.

In the View of the Constitution of the Church of Scotland, by Principal Hill, there are some details respecting the proceedings of the different courts, and these are either quoted or referred to, as coming from an authority of the highest kind. But details, both ampler and more minute in their nature, appeared to be wanting; and such it is the object of this work to supply.

The proceedings of a presbytery when it acts in its civil capacity are stated in an appendix. They differ from all its other proceedings in not being subject to the review of the superior church courts. Advice is occasionally asked from a synod or an assembly in conducting them; but the appeal lies to the Court of Session in all matters affecting churches, manses, glebes, and schoolmasters. For authority upon these subjects it is sufficient to refer at once to the valuable works of Sir John Connell.

There is no mention made in this work of the management of the poor by kirk-sessions; nor would it be possible to state particularly how that voluntary labour of love is carried on in all the different parishes in the church. Much information will be found in a work on the Poor, by Dr. Burns of Paisley, and in Mr. Dunlop's important treatise on the Law of Scotland relative to the Poor.

CONTENTS.

SECTION I.

Page

THE KIRK-SESSION, ... 1

SECTION II.

OF PETITIONS, REFERENCES, DISSENTS, COMPLAINTS, APPEALS, AND EXTRACTS, ... 28

SECTION III.

THE PRESBYTERY, ... 38

SECTION IV.

THE PROVINCIAL SYNOD, ... 74

SECTION V.

THE GENERAL ASSEMBLY, ... 81

SECTION VI.

Page

THE COMMISSIONER OF THE GENERAL ASSEMBLY, . . 92

APPENDIX.

THE PRESBYTERY ACTING IN A CIVIL CAPACITY, . . 97

LIST OF ACTS OF ASSEMBLY REFERRED TO, . . . 111

INDEX, ... 113

THE PRACTICE IN THE SEVERAL JUDICATORIES OF THE CHURCH OF SCOTLAND.

SECTION I.

THE KIRK-SESSION.

Meeting. A KIRK-SESSION is composed of the minister of the parish, and of lay-elders. It is "legally convened, when summoned by the minister from the pulpit, or by personal citation to the members."* There are no fixed times for its meetings. In many parishes they are held at regular and not very distant intervals. This gives greater respectability to the court than when it is ready to be summoned on every occasion that an individual applies to have his case considered. The business before a kirk-session may be so easily and speedily settled, that, for the convenience of having the members assembled, its meetings are not unusually held immediately after divine service is finished on the Lord's day. But, in general,

* Hill's View of the Constitution of the Church of Scotland, pp. 80, 81.

it is more for edification that the day of sacred rest should be entirely devoted by the office-bearers of the church, as well as by others, to its own peculiar purpose, and that the ordinary business of a kirk-session, as is the case in many parts of Scotland, should be transacted on a week-day. This is also conformable to ancient practice.*

Constituted. The meeting is constituted, and is also concluded by prayer; and both these acts must be entered in the minutes, otherwise *ex facie* the meeting has not been regularly held.

Who presides. The minister of the parish is officially moderator of the kirk-session. Where there is a collegiate charge either minister presides, as that matter may be settled between them. The other is a constituent member of the session. In the absence of the moderator, any other minister may preside in his name, and with his permission. In the event of a vacancy in the parish, whether by the death of the minister or otherwise, his place is supplied by the members of the presbytery in succession, who have power, by appointment of the presbytery, to perform in that parish, each of them when he is sent to officiate there, all the parts of ministerial duty, which the incumbent himself has to discharge. This practice received the express sanction of the General Assembly in 1820, when a reference was made to it by the presbytery of Fordoun, on occasion of a protracted vacancy in the parish of Arbuthnot.† But the church is jealous of entrusting such a power, for a length of time, to any one but the incumbent himself. And it was upon this principle that the presbytery of

* Book of Common Order, ch. v. † Act 8th Assembly 1820.

Edinburgh, in a recent instance, notwithstanding the mass of business that would accumulate in such a parish as North Leith, refused to appoint one of its own members to call meetings of the kirk-session whenever they might be necessary, and to preside in them during the continuance of the vacancy.

Ordained assistant and successor.

An ordained assistant and successor to a minister is not a constituent member of the kirk-session, with which that minister is connected. This was decided by the General Assembly, in the Cambuslang case.* An interim act upon the subject was passed, and was transmitted to presbyteries as an overture, in 1784, and the three following years; the purport of which was, that ordained assistants and successors should be made constituent members of session, and either the minister or his ordained assistant should sit and vote in the presbytery and synod, and be eligible as a member of assembly.† But the sense of the church was never obtained upon these points; and no farther notice was taken of the matter after 1787 till 1806, when another overture was transmitted, in which it was proposed, that ordained assistants and successors should not be constituent members of session, and that all ministerial authority and privileges should continue to reside in the minister of the parish, except by the special permission of the church.‡ This overture was not re-transmitted; and it does not appear that any returns were made to it. But the decision of 1806 establishes the point, that a minister and his ordained assistant do not both sit as members of session; and

* Assembly 1806, sess. 4. † Act 7, Assembly 1784.
‡ Act 5, Assembly 1806.

it is the understanding throughout the church, that so long as a minister is not incapacitated for acting, he alone has the power to call meetings of the session, and to preside in them ; and the ordained assistant can only preside in his room. In like manner, it is only in the absence of the minister that his ordained assistant is acknowledged as a member of presbytery or synod, and is eligible as a member of the General Assembly.

Casting vote. In the kirk-session, as in all other judicatories of the church, the moderator has only a casting-vote.

Number of Elders. The number of elders belonging to a kirk-session is regulated by the exigencies of the parish.* In every kirk-session there must be at least two elders, as it requires a minister and two elders to form a quorum of the session. The attention of the General Assembly 1825 having been called to the fact, that in many parishes meetings of the kirk-session were not held from the want of a sufficient number of elders, an injunction was issued by that Assembly, and by the three following assemblies, to all the presbyteries of the church "to use their best and most prudent endeavours to have all the parishes within their bounds suitably supplied with elders."† From the concluding notice respecting this matter, by the Assembly 1828, it appears that the injunction has not been so far observed as to attain the object of having an efficient kirk-session in every parish.‡ It is plainly a departure from the constitution of our church to allow such a defect to exist; and it lies

* Second Book of Discipline, ch. vi. sect. ii.
† Assembly 1825. Sess. ult. ‡ Assembly 1828. Sess. ult.

with the presbyteries, within whose bounds any parish remains without its proper ecclesiastical court, to continue those endeavours which they are enjoined to use till the object in view has been fully accomplished.

Election. The number of elders in a kirk-session is usually kept up by the election of new ones as vacancies occur. At first there was a change in the eldership every year; the duties of the office being considered too burdensome, and also of too serious and important a nature to admit of its being held for a longer period at once.* But "eldaris anis lawfully callit to the office, and having gifts of God meit to exercise the same, may not leive it again."† The election belongs to the session, who look out for such as they deem fittest to hold the office, and deal with them in private to ascertain their willingness to accept of it.

Qualifications. "The elders must be men of good life and godly conversation, without blame and all suspicion, careful for the flock, wise, and above all things fearing God."‡ "Men of best knowledge in God's word and cleanest life, men faithful and of most honest conversation that can be found in the kirk must be nominate to be in election."§ In conformity with these declarations of the founders of our church, "the General Assembly appoints the judicatories of this church to take good heed that none

* First Book of Discipline, ch. x. 3.—Election of Eldaris and Deaconis in the church of Edinburgh, approved by Assembly 1582. Sess. 12.

† Second Book of Discipline, ch. vi. 2.

‡ Book of Common Order, ch. ii.

§ First Book of Discipline, ch. x. i.

be admitted to, or continued in the office of an elder, but such as are tender and circumspect in their walk, and punctual in their attending upon ordinances, and strict in their observation of the Lord's day, and in regularly keeping up the worship of God in their families."* This act of assembly has been repeatedly renewed and pressed upon presbyteries. Other qualifications of an elder are, that he must have attained the age of twenty-one; that he must be a communicant, and an inhabitant of the parish, residing therein at least six weeks annually, or an heritor in the parish liable to pay stipend and other parochial burdens, or the apparent heir of an heritor of that description in the parish. Respecting any person proposed to a kirk-session to be ordained an elder, who resides only occasionally in the parish, a certificate must be produced under the hands of the minister and kirk-session of the parish where he generally resides, that he is of unblemished character, and regular in giving attendance on the public ordinances of religion.†

Edict. Before the ordination of elders, and at the distance of not less than ten days from it, their edict must be served, that is, their names must be "publicly proclaimed in the audience of the whole church upon a Sunday before noon, after sermon, with admonition to the church, that if any man know any notorious crime or cause that might unable any of those persons to enter in such a vocation, they should notify the same to the session." "If any of those nominate be noted with public infamy, he ought to be repelled."‡

Ordination. "If no member of the congregation offers any objection upon the day fixed for the

* Assembly 1722. Act 9. † Act. 10. Assembly 1816.
‡ First Book of Discipline, x. 1.—Election of Eldaris and Deaconis.

ordination, or if the session finds the objections that are offered frivolous, or unsupported by evidence, the minister proceeds, in face of the congregation, to ordain the new elders; that is, to set them apart to that office by prayer, accompanied with an exhortation to them, and an address to the people."* The ordination takes place after sermon, and after the minister has obtained satisfactory answers to the following questions, which he proposes publicly to the persons whose edict was served. "Do you believe the Scriptures of the Old and New Testament to be the word of God, and the only rule of faith and manners? Do you sincerely own and believe the whole doctrine of the Confession of Faith, approven by the General Assembly of this National Church, and ratified by law in the year 1699, to be the truths of God; and do you own the whole doctrine therein contained as the confession of your faith? Do you sincerely own the purity of worship authorised and practised in this church, and are you persuaded that the presbyterian government and discipline now so happily established therein, are founded upon the word of God, and agreeable thereto? Do you promise that, in your practice, you will conform yourselves to the said worship; that you will submit yourselves to the said discipline and government; that you will never endeavour, directly or indirectly, the prejudice or subversion of the same; and that you will follow no divisive courses from the present establishment in the church? Do you accept of the office of an elder of this parish, and promise, through grace, faithfully, diligently, and cheerfully to discharge the duties thereof?"†

* Hill's View of the Constitution of the Church of Scotland, Pp. 80, 81.

† Act 11, Assembly 1700. Act 10, Assembly 171 1.

The ordination being finished, the minister directs the new made elders to meet with the session at the conclusion of divine service, that they may receive the right hand of fellowship. There also their names are entered upon the roll of the session. By the answer which they are expected to return to the second question, they express their approbation of the Confession of Faith; and either at their ordination, or whenever they are judicially called upon to do so, they must subscribe the formula agreed to by our church. This formula is the substance of the questions proposed. The great reason for requiring subscription to it is, to obtain from those who sign it an explicit declaration of their assent to all that is contained in the Confession of Faith. From the year 1698 downwards, this has been considered as a *sine quâ non* in the qualification of an elder. And when a minister, in the close of the last century, presumed, in ordaining elders, to depart from the established practice, and not only not to insist upon subscription to the formula 1694, but to propose questions different from those which are implied in that formula, and by no means adequate to its spirit, a very solemn and circumstantial deliverance was given by the General Assembly upon the subject, and he himself, being called to the bar of the Assembly in the following year, was admonished of his duty, and enjoined to be more careful for the future.*

A parish without Elders.

When a parish is entirely without elders, the minister applies to the presbytery of the bounds to appoint a kirk-session for him, or the presbytery, being ascertained of the fact, proceeds of itself to do so. A meeting is held with the heads

* Assembly 1799, Session 8. Assembly 1800, Session 7.

of families; fit individuals are selected; their edict is appointed to be served; the presbytery meets again for their ordination; and the forms as above described are observed. A case came before the General Assembly 1827, in which elders had been ordained, when there was no kirk-session, without any application to the presbytery of the bounds; and their ordination not being according to the rules and laws of the church, was declared to be null and void.*

Elder from another parish.

An elder, removing from one parish to another, is often admitted *ad eundem* in the kirk-session of the parish where he takes up his residence. In this case it is only necessary to serve his edict, or give notice to the congregation that the person in question, having been already ordained an elder, will be received as a member of the kirk-session, unless valid objections be shown.

Non-residing Elder.

It is competent for a kirk-session to find that an elder who does not reside within the parish, and who does not return to it within twelve months to discharge the duties of an elder, can no longer continue to be one of their number. This finding they intimate to him by letter.†

Business of Kirk-session.

It belongs to the kirk-session to superintend and promote the religious concerns of the parish in regard to both discipline and worship; to appoint special days for the worship of God, when it considers such days to be for the spiritual advantage of the parish; to settle the time for dispensing the ordinances of religion; to judge of the qualifications of those who desire to partake of them; to grant

* Assembly 1827, Session 6, Kilbrandon.
† Assembly 1806, Session 7.

certificates of character when persons are about to remove from the parish; to take cognizance of such as are guilty of scandalous offences; and to cause them to undergo the discipline of the church.

Mode of proceeding.

The management of a parish is not usually left, in a great measure, to the minister. His various duties bring him much into contact with his people, and enable him to form a very intimate acquaintance with their circumstances and their character. He is also not only the organ of the kirk-session, but in almost every instance its counsellor and the object of its confidence; while at the same time he has too much respect for its members, and too much value for their gratuitous services, to take any measures of which he is not satisfied that they will approve. It is important, however, for him to remember, that it is not in his individual capacity, but as moderator of the kirk-session, that he has power either to admit to privileges or to refuse them, and that, consequently, in any case of difficulty, he should direct the person applying to make his request to the session. The request is then minuted and discussed, and if the party thinks himself aggrieved by the decision, he has it in his power to seek for redress by appealing to the superior court. It is comparatively a rare thing that a man pushes himself forward in opposition to the wish of his minister and of the other members of session. They have much private influence in their different parishes; and so discreetly, upon the whole, is that influence exerted, that the business of kirk-sessions is in consequence greatly diminished, or at least greatly facilitated. It is thus that, without any formal procedure, privileges are often withheld for a time from those who have given

offence by the levity of their conduct, or their disregard of the ordinances of religion, or who have been found upon examination to be ignorant of the truths of religion. This exercise of authority, accompanied, as it should always be, with earnest and affectionate private admonition, is agreeable to the form of process, and will generally produce the best results.*

Granting of privileges.

Privileges cannot be refused to any person merely upon suspicion of his having been guilty of improper conduct, however strong the suspicion may be. The facts must be admitted by him, or, in consequence of information being given to the session, or of a *fama* against him, must be in the course of probation to warrant such procedure. A kirk-session exposes itself to censure, if the person insists upon his privileges, and no grounds can be shown for withholding them.

The General Assembly ordered privileges to be granted in a particular case, notwithstanding continued absence from the parish church, because the appellant had concerns in another parish, which frequently obliged him to be in that parish in the end of the week, and because he attended divine worship regularly there.†

Ignorance of the particular views of Christian doctrine entertained by a minister or his session, is not a sufficient ground for refusing privileges. It is the being grossly ignorant which is particularly mentioned as unfitting a parent to stand as sponsor in transacting a solemn covenant with God.‡ Members of the visible church, who profess their faith in Christ

* Form of Process, ch. 2 and 3. Act 11, Assembly 1707.
† Assembly 1809, Sess. ult. White, Avondale.
‡ Act 4, Assemby 1712.

and obedience to him, and whose conduct does not subject them to the censures of the Church, are entitled to privileges. In every parish there will be some unhappy individuals, who, notwithstanding the most pains-taking efforts to instruct them, will still be deficient in their information upon the important truths of religion. What course should be followed in regard to them it is difficult to say. They are objects of compassion, for whom prayers should be unceasingly offered, in addition to any means that are used for enlightening their minds. But deplorable ignorance is confined to comparatively few. When privileges are withheld from great numbers on the score of ignorance, there is room to apprehend that the fault is less with the people than with their rulers, who, instead of "holding fast the form of sound words," are bent upon propagating their peculiar sentiments, and dissatisfied with all who do not embrace them. The Church does not suffer any thing like a general stoppage of privileges.*

Communicants.

In former times it was the common practice, previous to the dispensation of the Lord's Supper, for kirk-sessions to purge the roll of communicants; that is, to consider who were entitled to be admitted to that ordinance, and who were unworthy, in consequence of any circumstances in their conduct since the last celebration of it. The persons upon whom animadversions were made were either called before the session, or were waited on in private by some of its members, and they were received or not as communicants, according to the appearance and professions of repentance which they made.

* Assembly 1824, 1826, 1827. Bracadale.

Something of the same kind continues to be done, although probably nowhere in the same formal manner as before.

Discipline. "In that temperate exercise of discipline which the general practice of the Church of Scotland recognises as congenial to her constitution, care is taken to avoid every appearance of intermeddling officiously with those matters that fall under the cognizance of the civil magistrate; no solicitude is ever discovered to engage in the investigation of secret wickedness; counsel, private admonition, and reproof, are employed in their proper season, and the public censures of the church are reserved for those scandalous sins which bring reproach upon religion, which give offence to the Christian society, and which cannot be overlooked without the danger of hardening the sinner, of emboldening others to follow his example, and of disturbing and grieving the minds of many worthy Christians."* Nothing is admitted as the ground of a process for censure but what has been declared censurable by the word of God, or some act or universal custom of this National Church, agreeable thereto. And a scandal, that has not been noticed in order to censure for the space of five years, cannot be again revived so as to enter a process thereanent.† Neither can a case of scandal, the decision of which had become final, be revived.‡

Before moving in any case of scandal, the session has to consider whether it would be most for edification to make it a ground of process, or a subject of private admonition; and whether the matter is rightly

* Hill's View of the Constitution, &c. p. 131.
† Form of Process, c. i. 4.
‡ Assembly 1811, Session 4, Lyon, Synod of Angus and Mearns.

brought before the judicatory, and proper for it to enter upon. In a case of uncleanness, kirk-sessions are required to be very cautious how to admit the public entering a process without good warrant, where there is not a child in the case, unless the scandal be very flagrant.*

Scandals where noticed.

Scandals are noticed in order to censure in the parish where they are committed, or where the parties ordinarily reside; or, in the case of uncleanness, and when the persons guilty of it belong to different parishes, in the parish where the woman lives, or where the scandal is most notour.†

Execution of summons.

The first step in any case is to ascertain that the persons or parties concerned have been duly sisted before the session; and, for this purpose, the execution of summons, bearing its cause, and made before two or three witnesses insert, is to be returned by the beadle or officer in waiting, and the parties cited are to be called at the door.‡

Citation.

Citations to appear before a kirk-session can be issued only by the session of the parish in which the person to be summoned resides; and one kirk-session, on being applied to by another, is bound to cause summon the person charged with scandal to appear before that session where the scandal is to be tried.§

A citation must be in writing, bearing its cause, either at the instance of a party complaining, or at least by order of the judicatory. If the parties reside within the parish, it may be upon forty-eight hours'

* Form of Process, ch. ii. 1, 2; iii. 1.
† Ibid. ch. iv. 15, 16. Separate Act, Assembly 1771.
‡ Ibid. ch. i. 3. § Ibid. ch. i. 6; iv. 17.

advertisement. It is either given to them personally, or left at their dwelling-house. If the party summoned fails to appear, a second citation follows, and also a third; but the third is peremptory, and infers contumacy, if not obeyed. It is usually given with certification, either that the person will now be held contumacious, or that the case will be proceeded with in his absence. Citations *apud acta* are also peremptory. *

Contumacy. Contumacy is one of the greater offences for which a kirk-session is not allowed to inflict censure by itself. Reference is to be made to the presbytery of the bounds, and the contumacious person cited to appear before that judicatory.† But it is competent for a kirk-session, in a case of contumacy, before reporting it to the presbytery, to take cognition, either by examining witnesses, or by other documents, of the verity of the scandals delated against the contumacious person.‡

Witnesses. Citations to witnesses in a cause are made in the same way as to parties. A list of the witnesses to be made use in the process is given to the defender some time before, or at least at his compearance; and he is allowed to object to any of them; and if he satisfies the session of the relevancy of his objections, the witnesses objected to are cast.§ Additional witnesses, by the examination of whom the time of concluding the proof would be prorogued, cannot afterwards be produced. ‖

Singulares testes, or witnesses who have no concurring testimony, do not amount to a legal proof.

* Form of Process, ch. ii. 3, 4, 5. † Ibid. ch. vi. ‡ Ibid. ch. ii. 6.
§ Ibid. ch. ii. 9, 10. Assembly 1815, sess. 9, Lockerby.
‖ Assembly 1785, sess. 6, M'Laggan.

Disapprobation was expressed by the General Assembly when they were taken into one vote, with the *plene probatâ*, as the ground of a sentence. *

The evidence of witnesses not of entire fame, or nearly connected with parties, is taken *cum notâ*.

A person may be a witness although he has given the information upon which the session proceeds, unless he has complained for his own interest, or unless the presumptions of his malice against the accused person be strong.†

Every witness is solemnly purged of malice, good deed done or to be done, and partial counsel; is sworn and examined in presence of the accused party, if compearing; and signs his deposition. When witnesses cannot write, the clerk marks that they declare so. Every deposition of a witness is signed by the moderator.‡

Party accused. After a witness has finished his deposition, the party accused may propose, through the moderator, such questions or cross-questions as may tend to his exculpation, subject always to the session, which may refuse to have them put, if they do not appear to be pertinent. The party accused may also, before going to proof, offer grounds of exculpation to be proven by witnesses. In that case the session first considers the relevancy of the offered exculpation. If satisfied of that, the session, if required to do so, causes the witnesses to be summoned at the party's charges. And if the exculpation be fully proven as to the substance of the scandal, all farther proof of the accusation is sisted, and the defender is assoilzied.§

* Assembly 1700, sess. ult. Revising Synod-book of Dumfries.
† Form of Process, ch. ii. 10. ‡ Ibid. ch. ii. 11, 12, 14.
§ Ibid. ch. ii. 12, 13.

Uncleanness. In many of the cases which come before a kirk-session, and particularly in those of uncleanness, absolute proofs of guilt are scarcely to be had. The following are considered as pregnant presumptions of a man's guilt with a woman, and as sufficient to subject him to discipline, if he cannot disprove them; viz. suspicious frequenting of her company, being *solus cum solâ in loco suspecto*, or in suspect postures, and the like.* It is often a severe trial upon the patience of a kirk-session to listen to the mutual recriminations of the parties before them, which, with the class of people that they have frequently to deal with, it is almost impossible to stop; or, with a conviction of his guilt upon their minds, to hear the evasions of the party accused, and his repeated asseverations of his innocence. From the intimate knowledge which the members of session have of the people under their care, scarcely any case comes before them, with the particulars of which some or all of them are not previously acquainted. But, sitting as judges, the proof that is adduced may not be sufficient to bear them out in finding the defender guilty. In that case, the form of process warrants them to sist procedure till God in his providence give farther light.† This is an unsatisfactory result of the process. But the very unsatisfactoriness of it, together with the exclusion from privileges which accompanies their continuance under scandal, often has a good effect upon the parties, in quickening their diligence in finding proofs, or bringing them to an acknowledgment of their sins.

Oath of purgation. At all events it is considered to be preferable to pressing the oath of purgation upon a man, the taking of which is the only way

* Form of Process, ch. iv. 7. † Ibid.

of removing the scandal in the circumstances mentioned above. This oath, in the administering of which the utmost tenderness and caution are to be used, is never to be taken without the advice of the presbytery of the bounds.*

When an unmarried woman is known to be with child, there is ground for a process against her. She is cited before the session, and on her appearance is required to declare who is the father of her child. If she discover not the father, she is dealt with as contumacious. The father, being named, and not appearing voluntarily to confess his guilt, is summoned before the session, and informed of the charge against him. If he deny, he is confronted with the woman, and the matter, if necessary, goes to proof. If the man clears himself of the charge, the woman is dealt with to give the true father; and if she gives no other than she formerly named, she is censured according to the quality of the offence confessed by her, and remains under scandal till farther discovery.†

There is also ground for a process, when a married woman, whose husband has been notourly absent for a considerable time beyond the ordinary period that women use to go with child, is found with child. But the form of process requires such a case to be handled with great prudence; and, being a case of adultery, it must be referred to the presbytery of the bounds, before it is proceeded with by the kirk-session.‡

It may happen that a woman declares she does not know the father of her child. Here also the prudence of the session is required to be exercised: the advice

* Form of Process, iv. 7, 8, 9. † Ibid. 5, 7, 10.
‡ Ibid. iv. 4.

of the presbytery is asked; the woman, if of good character before, is called on to declare the truth, as if she were upon oath; but no formal oath is allowed to be administered; and if she confesses that she was not forced, but does not know the father, she is, whether married or unmarried, dealt with as an adulteress.*

When a person confesses uncleanness, and there is no *corpus delicti*, particular care is taken to ascertain the motives which have led to such a confession, lest it should arise from a wish to injure the person with whom the act of uncleanness is said to have been committed.†

Processes referred to presbyteries.

The processes, which a kirk-session does not determine, but refers to the presbytery for advice as to its procedure thereanent, are, scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the congregation, schism, and separation from public ordinances, processes in order to the highest censures of the church, and continued contumacy. In regard to these the session first endeavours to obtain a confession of them, and then refers the case to the presbytery, sending an extract of its procedure, a part of which is to summon the parties to compear before the presbytery. Or if there be no confession, it makes the reference to the presbytery before proceeding to lead probation; and if probation is allowed to be led, the same, when finished, is brought to the presbytery for direction as to the censure to be inflicted. It is usual for presbyteries to remit those

* Form of Process, ch. iv. 11. † Ibid, iv. 12, 13.

who compear before them to their own kirk-sessions to receive orders respecting the discipline which they are to undergo.*

Administration of discipline.

In general, therefore, it devolves upon kirk-sessions to prescribe the manner of making professions of repentance. The practice here is not uniform. Some kirk-sessions still require public appearances to be made before the congregation, although not with all the circumstances of severity with which our code was wont to be administered. Others, again, adopt a much more lenient mode of proceeding, merely appointing the parties to receive a rebuke in presence of the session. Every where there is an accommodation, more or less, to the change of times, and the change of feelings in the Christian community. The great objects, for which discipline is prescribed, are to secure good order in the church, and to promote edification. It is to be presumed that, whatever be the course which is followed in administering discipline, the members of sessions keep these objects in view. It cannot be supposed that, in their responsible situation, objects of such importance will be overlooked by them; and it would be rash to pronounce, that even where public appearances are dispensed with, and the greatest leniency is shown, there is a want of attention either to good order or to edification. The attainment of absolution from scandal being left to the discretion of the session, it may be invested with difficulties as to the time when absolution will be granted, and the outward good conduct which must be previously observed, and the private examinations which must be previously submitted to.

* Form of Process, ch. vi.

And these difficulties, to the subjects of discipline, may be fully as formidable, and fully as profitable, as ever was a public rebuke. A session which desires the good of those committed to its care, and remembers that its power has been given "for edification, and not for destruction," will not only seek for signs of repentance, but use every means to produce them; and will doubtless employ that private dealing with the unhappy individuals before them, which the standards of our church in all cases recommend, and which may be expected to be peculiarly successful, when humbling confessions or disclosures have been made.*

Excommunication.

All persons under scandal are excluded from privileges. The lesser excommunication, or suspension from the privileges of the church, is the highest censure which kirk-sessions usually inflict. "When the offender, instead of being reformed by the sentence of the lesser excommunication, presumptuously persists in his former sins, the session proceeds, under the direction of the presbytery, and with the utmost solemnity, to the greater excommunication. Yet even this sentence is not understood to have any effect in dissolving the relations of civil life. It leaves access to various means of reformation; and it is removed by the sentence of absolution, which the church is always ready to pronounce upon satisfying evidence of repentance."†

A person under the sentence of excommunication is not relieved from it upon giving satisfaction to the mi-

* Form of Process, ch. iii. 1. First Book of Discipline, ch. ix. Assembly, 1596. Sess. 7. Hill's View of the Constitution, p. 133.

† Hill's View of the Constitution, pp. 132, 133. The Ordoure of Excommunication and of Public Repentance, Assembly, 1569. Form of Process, ch. iii. 4, 6. ch. viii. ix.

nister or kirk-session of his parish. The presbytery of the bounds must first be satisfied as to his repentance.*

When the censure of the lesser excommunication has been inflicted on a person who lives under a different session from that by which he has been convicted of scandal, intimation to that effect is given to the session of the congregation to which he belongs.†

Fugitives from discipline.

Those who abscond, during the dependence of a process for scandal against them, are summoned from the pulpit of their own parish church, and failing to appear, are reported to the presbytery; ordered by it to be cited to appear before it, from the pulpits of all the churches within the bounds; and not compearing, are declared by the presbytery to be fugitives from church discipline, the same being directed to be intimated in all the kirks within the bounds.‡

Reference.

Cases of difficulty, and scandals of the grosser kind, it is requisite that a kirk-session should refer to the presbytery of the bounds. From the delicacy which members of session feel in regard to their acquaintances or neighbours, or the doubts which they entertain of the validity of the evidence submitted to them, or their wish to throw the odium of the sentence off themselves, or the weight which they expect it to receive from being suggested or pronounced by the presbytery, even ordinary cases of discipline are often made matters of reference. These last references, however, are extremely ill received;

* Assembly 1714, Sess. 7. Revisal of Synod Book of Orkney.
† Form of Process, ch. iv. 18.
‡ Form of Process, ch. ii. 16.

and from the deliverance invariably given on them, "remit to the kirk-session to proceed according to the rules of the church," the members of kirk-sessions may learn that they have nothing to gain by following such a course, and that, generally speaking, it is more to their own credit, and more conducive to the public good, to fulfil their duty in every case by exercising their own judgment.* When there is a reference to the presbytery, an extract of the whole of the proceedings of the session, upon the case, is made from the minutes, subjoined to which is the resolution to refer. The reference may be either *simpliciter*, that is, in regard to the whole case, without any opinion of the session being expressed; or upon some particular point, which, in the course of proceeding has appeared to the session to be a matter of difficulty.†

Dissent and complaint.

Any member of a session, or the minority of a session, may dissent from its proceedings, and cause that dissent be recorded, and may also complain of these proceedings to the next superior court, and so bring them all under review‡

Appeal.

A party, also, who thinks himself aggrieved by the judgment of a kirk-session, may bring his case before the presbytery of the bounds by appeal. The appeal must be made immediately, when the judgment is pronounced. It is not competent to make it at a subsequent meeting of the court; nor is the party entitled to have the minutes read over to him at that subsequent meeting, so as to give him an opportunity of entering an appeal. Extracts of the session's procedure in his case it is ne-

* Hill's View of the Constitution, p. 98. † See section 2.
‡ See section 2.

cessary for him to produce to the presbytery, and these also he must crave at the time of making his appeal. And, finally, his reasons of appeal must either be stated at the time that the sentence appealed from is given, or be lodged, in writing, and subscribed by himself, with the moderator or clerk, within the space of ten days. If the reasons of appeal are not lodged in due time, the appeal is held to be null and fallen from.*

Law agents not admitted.

Law agents are not allowed to parties before a kirk-session.† The nature of the court renders it unfit that they should be allowed. The object of a kirk-session is to promote the spiritual welfare of those who are under their superintendence, to reach their consciences, to lead those who have erred to repentance, and, by a calm investigation of facts and circumstances, to judge whether the accusations that are made are well or ill founded. It is consequently of the utmost importance that parties themselves should appear before the session, and be dealt with by it; that they should state their own case; and show the grounds upon which they either make their accusation, or rest their defence. It will rarely happen that, with the previous knowledge which the members of session have of the parties before them, opportunities will not thus be afforded of arriving, even amidst all the contrariety of statement that is made, at something pretty near to the truth; and that, either by the firmness with which the mem-

* Act 8, Assembly 1694.—Form of process, ch. v. i.—Assembly 1784. Sess. 9, Henderson, Presbytery of Lochmaben.—Assembly 1807. Sess. 6. Wylie, Synod of Angus and Mearns. See section 2.

† Assembly 1827. Sess. 9. Anderson, Presbytery of Paisley. Stewart's speech, Christian Instructor, 1827.

bers display in abiding by the opinion which they have formed, or by the affectionate earnestness with which they press upon the parties the unhappy situation in which they are placed, they will not succeed in terminating satisfactorily the process in which they are engaged. The history of kirk-sessions, the comparative fewness of the cases in which any dissatisfaction is expressed with their proceedings, and the confidence with which the people in general rely upon their decisions, are the best proofs of the wisdom of that constitution, which makes them mainly courts of conscience. Were law agents, on the other hand, to undertake the cause of parties before a kirk-session, it would be hopeless to expect that any moral or spiritual benefit would result from its proceedings. The agents would necessarily consider only by what means their clients, whether guilty or not, might be rendered successful; and the clients, removed from the operation of that influence which their minister and elders may be supposed to have over them, would be only anticipating a triumph from the talents displayed in their behalf. It is not to be doubted, also, that if law agents were permitted to act in kirk-sessions, it would scarcely be possible, at least in country parishes, to have any kirk-session. The elders are, in general, respectable and well informed men. They have a zeal against sin, but they have also much tenderness for the people. They are not ignorant of their duty. They are at pains to understand it, and they are most praiseworthy in performing it. But if their labours of love were to be rendered intricate and harassing by the subtleties of the law; if, instead of being instruments of good, they should find themselves puzzled, and perplexed, and overborne by men, who have no other object but to

extricate a particular individual from the awkward situation into which he has been brought, who would desire the office of an elder? or who would accept it?

Treatment of parties.

From parties being thus without any one in particular to manage their cause, it is the more incumbent on the members of session to explain to them fully and distinctly how they should conduct it in the session, or how, if dissatisfied with the issue of it there, they should carry it by appeal to the presbytery. Perhaps there never was an instance in which this was overlooked, or in which the utmost consideration was not shown to parties; every possible aid was not given to them, whatever they might be; and the utmost pains were not taken to impress upon their minds, that if they wished their cause to be farther considered, the rules of the church must be strictly complied with.

Minutes.

The minutes of kirk-sessions are regularly kept, the members in attendance, and the business transacted at every meeting being faithfully recorded. It is not necessary, at least in the first instance, to enter in the record all the evidence which is taken before a session. Many cases of scandal, notwithstanding the vehement opposition that is made to closing with the charge, terminate in an acknowledgment of the offence; and it is this result only, which, in such cases, it is essential to notice. On this account also, kirk-sessions are slow in putting witnesses upon oath, trying, in general, the effect of a precognition in throwing light upon a case. Whatever goes by a reference or appeal to a superior court, is necessarily a part of the record. The session-record needs to be regularly kept, as the presbytery may issue a peremptory order to have it produced. * By the Assembly, 1639, it

* Hill's View of the Constitution, p. 97.

was required that the session books of every parish be presented once a-year to the presbyteries to be tried by them. This standing order is perhaps more observed than it was, it being by no means an uncommon practice to submit the parochial registers to the committees of presbyteries, by which the schools are annually examined, and to have them attested by these committees.

It is believed not to be usual for the moderators of kirk-sessions, as the moderators of the other church judicatories do, to sign the minutes of session. A case occurred some years since in the civil court, in which a minute of a kirk-session was produced in evidence. It was objected to as informal, because it had not the signature of the moderator attached to it. But the Lord Ordinary, before deciding the question of informality, directed inquiry to be made as to whether it was the practice of that kirk-session to have its minutes signed by the moderator or not.

Not only must the minutes be correctly written, but care must be taken to have no blottings or interlinings. When any thing is deleted, it must be marked on the margin how many pages or lines are so blotted out, and that it was done by authority of a competent court; and this marginal annotation must be signed by the moderator and clerk. If any thing has been omitted, the omission is, in like manner, supplied on the margin, and subscribed by the clerk.* It is incompetent for a kirk-session, or any inferior court, to erase the minute, or minutes, or any part of the minutes of its own proceedings at a former meeting.—That can be done only by authority from its immediately superior court. †

* Act 9.—Assembly 1706.

† Assembly 1817, Session 7. Campbell, Synod of Merse and Teviotdale.

Ruling Elders. Every kirk-session is represented both in the presbytery of the bounds, and in the provincial synod by one of its elders. The representative is elected every half year, within two months after the sitting of the synod; and in case of death or demission, a new election is made within one month after these events. The elder carries with him an extract of his election, under the hand of the session-clerk; and unless he produces this extract, first to the presbytery, and afterwards to the synod, his name is not admitted on the roll of these judicatories.*

The session nominates its own clerk, and its own officer.

SECTION II.

OF PETITIONS, REFERENCES, DISSENTS, COMPLAINTS, APPEALS, AND EXTRACTS.

THE practice in regard to the various particulars mentioned in the title of this section, is the same in all the different ecclesiastical courts, and may be briefly explained at once.

Petitions. It is by petition that parties bring their cases before the church-courts, or get their references, complaints, or appeals introduced.

Petitions must be drawn up in proper and respect-

* Act 12.—Assembly 1776. Steuart of Pardovan's Collections, *passim* in book i. title vii. 11, and book iv.

ful language, otherwise they are rejected. They must also be competent in regard to what they desire.*

A petition, containing in the body of it that which should come before the court, not as a petition, but in a different form, cannot be received. A petition was rejected, which was in reality a complaint against an inferior court; because the court complained of was not thereby sisted as a party, and the matter of complaint should have been brought from it by appeal.†

Reference. A reference is made either *simpliciter*, that is, of the whole case, without any remark being made upon it, or upon some branch or circumstance of a case, where difficulty is felt. The subject of reference, and the resolution to refer are transmitted to the superior court, along with the whole particulars of the case, or as much of these particulars as will make the reference be thoroughly understood.

A reference cannot be made to the Supreme Court, if any court superior to that from which the reference proceeds meets before it. The church does not allow the regular gradation of its courts to be departed from.‡ Members of the judicatory, by which the reference is transmitted, are not deprived of their status as judges in the superior court, when the reference is considered. They have, equally with other members of that court, a right to deliberate and determine upon the matter referred.§

When a reference is taken up, the first thing that is done is to consider if it comes properly before the

* Assembly 1765, Session 5.—Synod of Galloway.

† Assembly 1756, Session 6.—Campbeltoun, Synod of Argyle.

‡ Act, August 30, Assembly 1639.—August 3, Assembly 1643.—Assembly 1821, Session 6, Presbytery of Dunfermline.

§ Hill's View of the Constitution, p. 98.

court, or if there was ground for making it. If it is informal, or if it appears to be unnecessary, it is dismissed. If not, it is sustained; parties connected with it are heard in the first instance, and a deliverance upon it is given.

Dissent. Any member of court may dissent from proceedings which he conceives to be contrary to the Word of God, the acts of Assembly, or the received order of this kirk, and may cause his dissent to be marked in the record. By so doing, he saves himself from any censure or danger that may arise from these proceedings.* The dissent must be given in immediately when the judgment dissented from is pronounced. It cannot be received at a subsequent meeting of the court; although in the case of the General Assembly, other members besides the dissentient are allowed, at the subsequent meeting, to express their adherence to his dissent, immediately after the minutes are read.†

When received. In the Assemby, 1828, a question arose as to dissents being received on the day subsequent to that on which the judgment dissented from was pronounced; and it appeared that repeated instances had occurred of dissents having been so received. But the Assembly appointed a committee to search for precedents, with regard to the time and manner of giving in dissents from judgments of that house, and received from its committee a report to this effect; That it was long the invariable practice that dissents were entered on the day upon which the sentences dissented from were pronounced, leave in this

* Act, June 4, Assembly 1644.
† Assembly 1819, Session 5, Small, Synod of Perth and Stirling.

case being given to members to adhere to the dissent on a subsequent day; but that, in some recent instances, dissents had been entered on a subsequent day. The Assembly, on the suggestion of the committee, enjoined that the ancient practice should in future be enforced, and uniformly observed.*

A dissent, whether accompanied by a complaint or not, can be given only by those who were present when the judgment dissented from was pronounced. Others, having taken no part in the discussion, are not entitled to object to the deliverance.†

A dissentient cannot, merely on the strength of his dissent, appear in the superior court against the judgment from which he dissents; nor can he be heard in the superior court in support of his dissent.‡ But in giving in his dissent, he may also intimate that he will lodge the reasons of his dissenting; and in drawing up these reasons he has it in his power to state fully, in a temperate and respectful manner, the grounds upon which he cannot acquiesce in the judgment of the court.

Reasons of dissent. Reasons of dissent are read in open court, but not entered in the record. They lie *in retentis*.§ Instances, however, have occurred, in which reasons of dissent have been rejected, in consequence of their being so expressed as to be disrespectful to the court, or injurious to individuals.‖

* Assembly 1828, Session 5 and 9.

† Assembly 1827, Session 5.—Campbell, Presbytery of Kintyre.

‡ Assembly 1757, Session 5.—Carlyle, Synod of Lothian and Tweeddale.

§ Act 7, Assembly 1730.—Assembly 1813, Session ult.—Ogilvy, Synod of Aberdeen.

‖ Assembly 1803, Session 9 and ult.—Dickson and Hagart.

Dissent and complaint.

It is the privilege of a member of court not only to dissent from a judgment with which he is dissatisfied, but also to be able to carry it by complaint to a superior court, where it may be reviewed in all its circumstances. For this purpose he dissents and protests for leave to complain. If, instead of this, he were to protest and appeal as a party, the proceeding would be inept, and his object, to have the judgment with which he is dissatisfied reviewed, would be defeated, because his appeal would be held to be incompetent.*

The dissent and complaint are given in at the time the judgment complained of is pronounced, and cannot be received at a subsequent meeting.† The complaint is made to the next superior court, unless the General Assembly meets before it; in which case the complaint may be carried directly there. Reasons of dissent and complaint must be lodged in due time, that is, within ten days; and these, with all the papers belonging to the case, out of which the complaint has arisen, are transmitted to the superior court.

Effect of a complaint.

Not only are the proceedings thus brought under review, but, by the complaint, the members who concurred in the judgment, the complainer or complainers, and all parties, are sisted at the bar of the superior court. "It was in my remembrance," says a highly respected authority, "a matter of doubt, whether, if there was no appeal by a party, a complaint from the minority of a court could have the effect of reversing the judgment of the

* Assembly 1827, Session 6.—M'Gillivray, Synod of Argyle.

† Assembly 1819, Session 5.—Small, Synod of Perth and Stirling.

majority. But the doubt has been completely removed by a number of decisions, in different years, conformable, in my opinion, to the nature and reason of the case; and it is now understood to be part of the law of the church, that, upon a complaint from the minority of an inferior court, the court of review may dispose of the sentence complained of, in the same manner as if it had been brought before them by the appeal of a party."* The cases marked below are only a few of those in which complaints alone have been the ground of a reversal of the sentences complained of.† One solitary instance is on record, in which a dissent and complaint were not held as sisting procedure, and no notice was taken of them in the deliverance of the General Assembly.‡ This omission was the cause of a dissent being entered from that deliverance.

In judging of a complaint, the first thing to be done is to consider whether it has been rightly made, and whether there appears to have been ground for it. It is sustained or dismissed accordingly.

Protest. A protest may be taken against the judgment of an inferior court; and it always precedes a complaint or an appeal. But a protest is not allowed to be taken against the sentence of the su-

* Hill's View of the Constitution, pp. 101, 102.

† Assembly 1784, Session 9—Rose, Synod of Ross. Assembly 1785, Session 8.—Synod of Glasgow and Ayr. Assembly 1789, Session 9, and ult.—Taylor, Synod of Glasgow and Ayr. Assembly 1793, Session 4.—Keith, Synod of Aberdeen. Assembly 1794, Session 6.—Chapman and Inglis, Presbytery of Perth. Assembly 1798, Session 8.—Legertwood. Assembly 1815, Session 5.—Frazer, Presbytery of Abertarph. Assembly 1817, Session 7.—Shiells, &c. Synod of Merse and Teviotdale.

‡ Assembly 1828, Sess. 6. Downie and Munro.—Synod of Ross.

preme ecclesiastical court. In some instances, particularly in the noted assembly 1789, members not only dissented, but also protested against the decisions of the General Assembly. But in a remarkable case which occurred in the Assembly 1770, the practice was declared irregular and unconstitutional. The following is the statement in the abridgment of the acts of the Assembly of that year. "Sess. 8. The Assembly testifies their great dissatisfaction with Mr. Thomas Stewart, for his immoral conduct, and declares him to stand suspended *sine die* from the office of the ministry; and strictly prohibits him from exercising the said office, or any part thereof; and approves of the deed now granted by Mr. Stewart, assigning to the Presbytery of Auchterarder the stipend, manse, and glebe, of the parish of Crieff, and obliges him not to reside within the bounds of that Presbytery. A protest taken by some of the brethren against this sentence, and dissents entered thereafter by other members. The procurator for the church reserved leave to himself to be heard to-morrow upon the protest. Sess. 9. The procurator for the church heard upon the subject of the protest taken at last diet, and the entering of such a protestation by parties against the judgment of the supreme court declared irregular and unconstitutional."

Appeal. An appeal is made to the next superior court by a party who thinks himself aggrieved by the judgment passed in his case by an inferior court. It is made immediately on the judgment being intimated to him; extracts of the proceedings are craved by him to be forwarded to the superior court: and reasons of appeal are stated by him at the time, and entered on the record, or must be lodged by him

in write, with the moderator or clerk of the court appealed from, within the space of ten days after the time of appealing.* It is usual for the court, from which an appeal is taken, to appoint some of its members to answer the reasons of an appeal; and these answers are transmitted to the superior court along with the other papers.

All the members who do not dissent from the judgment of the inferior court, or complain of it, are sisted by the appeal at the bar of the superior court, and may appear in support of the judgment appealed from. But the superior court may limit the number of those who speak from the bar either for or against it.†

"The appeal, if conducted in the regular manner which the laws of the church prescribe, stops the final execution of the judgment, brings the whole proceedings of the court which had pronounced the judgment under review, and sists the members at the bar of the superior court; that is, they are not entitled to deliberate and vote in the review of their own judgment; but they are called to state, in such manner as they think proper, the reasons upon which their judgment proceeded; so that the sentence appealed from is commonly defended before the superior court, both by the party who considered it as favourable to his interest, and also by the members who concurred in pronouncing it." ‡ The appellant speaks first, and has the right to reply.

* Act 8. Assembly 1694.—Form of Process, ch. v. 1.—Assembly 1784. Sess. 7.—M'Intosh, Presbytery of Inverness, Sess. 9. Henderson, Presbytery of Lochmaben.—Assembly 1807, Sess. 6. Wylie, Synod of Angus and Mearns.

† Assembly 1824, Sess. 5. M'Farlane, Synod of Glasgow and Ayr.

‡ Hill's View of the Constitution, pp. 99, 100.

Effect of an Appeal.

A proper appeal sists procedure, or at least prevents the final execution of a sentence, till the appeal be discussed. Frivolous appeals may be disregarded. *

In regard to the settlement of a parish, that it may not be unnecessarily delayed, it is especially provided, that, notwithstanding an appeal, a presbytery may proceed to all the previous steps, to take the presentee upon trials, and to serve the edict, leaving only the ordination or admission till the appeal be discussed. †

If *male appellatum* is found, in regard to an appeal, there is no cause before the superior court. If an appeal is found to be frivolous or vexatious, it is dismissed, and the judgment of the inferior court is usually affirmed at the same time. But this does not necessarily take place. The superior court, being a court of review, may consider the case that has been brought before them, and remit it to its inferior, with such instructions as seem to be necessary. If an appeal is sustained, a reversal of the sentence appealed from, or a reversal of such parts of the sentence as appear to be exceptionable, is pronounced.

In the conduct of complaints and appeals, law agents, or counsel, are allowed to act, not only in the General Assembly, but also in presbyteries and synods. But it is specially provided, that lawyers, who are constituent members of court, are not to act as counsel or procurators in any causes that come before the Assembly or the commissions thereof. ‡ And a similar rule will hold in the inferior courts.

* Assembly, 1798, Session 9.—Orwell, Presbytery of Dunfermline.

† Act 5, Assembly, 1732.—Form of Process, chap. v. 10.

‡ Act 4, Assembly 1751.—Act 8, Assembly, 1783.

Extracts.

Extracts are allowed to parties, on their applying for them immediately on the proceedings in which they are concerned being closed. They are not granted at a subsequent time to parties. *

Whence to be given.

Extracts are given from the minutes, when completed, and approved by the court, and either entered in the record or ready to be so. Extracts have been applied for from the jottings, from which the minutes are made up. In one case, extracts from the jottings were allowed to enable parties to substantiate their complaints.† In another case, extracts from the jottings were refused to a party, who thought that it concerned his cause to have them produced.‡ The only difference in the circumstances of the two cases was, that the parties, in the first instance, were members of court. If an opinion upon the point may be hazarded, the second decision mentioned above, refusing extracts from the jottings, is, in all cases, the proper one. The register, when filled up, and signed by the moderator and clerk, as the minutes of all the superior judicatories are required to be, is the only record of the court. It is the province of the moderator to take care that it gives an accurate and faithful report of the mind and the proceedings of the court. For this purpose, he causes the minute of every separate transaction to be read repeatedly in the hearing of the members, till he ascertains that it expresses their meaning; and it is not till the whole of the minutes, written out *in mundo*, have again been deliberately read, that his signature is at-

*Assembly, 1808, Session 6.—Powis, Presbytery of Aberdeen.

† Assembly, 1812, Session 9.—Bryce and Douglas, Synod of Aberdeen.

‡ Assembly, 1823, Session 4.—Marshall, Presbytery of Paisley.

tached to them. If the members neglect both their duty and their interest in attending to the minutes, they have only themselves to blame for the consequences of that neglect. They have ample opportunities, both of rendering the register correct, and of satisfying themselves that it is so; and there does not appear to be any occasion for referring to jottings, which are not a record of the court, and which, are, in fact, superseded as soon as the record is filled up. *

SECTION III.

THE PRESBYTERY.

At present there are seventy-eight presbyteries in the church of Scotland.

Erection of Presbyteries.

"As the General Assembly has the power of disjoining and erecting presbyteries at its pleasure, their bounds may be altered, or their numbers increased, according to the change of circumstances."†

To have a new presbytery erected, or to have one or more parishes disjoined from one presbytery, and annexed to another, a petition is presented to the General Assembly, or a representation is made to it, set-

* Assembly, 1813, Session 4.—Mearns, &c. Synod of Aberdeen. Stewart of Pardovan's Collections, book i. title 16, book iv. title v.

† Hill's View of the Constitution, p. 82.—Act iv. Assembly, 1699.—Act 13, Assembly, 1703.—Act 10, Assembly, 1707.—Act 5, Assembly, 1724, &c.

ting forth the circumstances which would render the attainment of these objects desirable. The Assembly makes the necessary inquiries, and judges accordingly.

Members. "A presbytery consists of the ministers of all the parishes within the bounds of that district, of the professors of divinity, if they be ministers, in any university that is situated within these bounds, and of representatives from the kirk-sessions in the district. Every kirk-session has the right of sending one elder; so that unless there be a collegiate charge, or an university within the bounds of the district, the number of ministers and elders in any meeting of presbytery may be equal."

The roll is made up every half year, at the first meeting after the provincial synod, when new elders are returned, and the extracts of their election are produced.

Moderator. A new moderator is then also chosen. He must be a minister. The election is a nominal one, proceeding according to what may be called a fixed and invariable rule, that the next in succession on the roll, that is, the next according to the date of his ordination, takes the chair. An attempt to infringe this rule is never made without disturbing the harmony of a presbytery; and it may be questioned, whether, when consuetude is of such long standing, it is in the power of a presbytery to elect as moderator, any member out of his order, and without his concurrence.

In the absence of the moderator, his predecessor in the chair presides; and failing him, "the eldest minister." *

* Steuart of Pardovan's Collections, book i. title 9.

Minutes. After the presbytery has been constituted, and the roll has been called, the minutes of last meeting are read, and signed by the moderator. If they offer any subjects for notice, it is usual to take these up in the first place, in the order in which they occur.

At the first meeting after the meeting of the provincial synod, the minutes of synod, which are required to be transmitted to all the presbyteries within the bounds, are read over.

Business. A presbytery has to judge in the references for advice, the complaints and appeals that come from the kirk-sessions within the bounds;* to examine schoolmasters on their appointments;† to provide for the annual examination of the parochial and other schools of the district; and to make an annual report on this subject to the General Assembly.‡ It belongs to presbyteries to grant licences to preach the gospel, and to judge of the qualifications of those who apply for them.

Students examined. Before a student is enrolled as a student of divinity, he must be examined by the presbytery, within the bounds of which he resides, upon literature, science, and philosophy, and particularly upon Greek and Latin; and when the attendance of students at the divinity hall is not regular, they must be examined again by their respective presbyteries during the currency of the fourth year of their course, upon their attainments in divinity, church-history, Greek and Hebrew. In both cases

* See section ii. † Act of Parliament 43. Geo. III. cap. 54.
‡ Act 12. Assembly 1799. Act 7. Assembly 1820.

they must present to the professors of divinity the certificates granted by their presbyteries.*

Proposed for trials. When a student is proposed for trials, and when any of the preliminaries respecting his being taken on trials are discussed, the presbytery must be alone. The motion for taking him on trials lies on the table till the next ordinary meeting, when the proper certificates in his favour are directed to be produced, and he is desired to be present. It should be his business, in the meantime, to wait upon the members of the presbytery, that they may have an opportunity of conversing with him in private.

A student may be proposed for trials during the currency of his last session at the divinity hall; but, in that case, if the session is to be claimed as one of regular attendance, an additional certificate, of his having attended during that session, must be produced to the presbytery before his trials are concluded.

Qualifications. It is required that a student who is proposed for trials shall have completed his twenty-first year.

His attendance at the divinity hall may be regular three sessions, and completed in a fourth; or regular for two sessions, and completed in five; or regular in the first, second, or third session of his course, and completed in six sessions.†

Certificates. The certificate or certificates, which he produces from the professor or professsors

* Act 7. Assembly 1827. This act is in a great measure nugatory; and ought to be amended to the effect of giving presbyteries a power to prevent students from being enrolled, if the result of the examinations is unsatisfactory.

† Act 8. Assembly 1813. Act 8. Assembly 1826.

of divinity under whom he has studied, must not only bear that his attendance has been such as is stated above, but also that he has delivered an exegesis in Latin on some controverted head in divinity, a homily in English, an exercise and addition, a lecture on some large portion of Scripture, and a popular sermon; and that his conduct has been suitable to his views in life. These certificates are recorded at full length in the minutes of presbytery.*

The character of the student proposed for trials must be in every respect satisfactory to the presbytery. He ought for the year preceding to reside chiefly within the bounds of the presbytery, that he may be personally known to its members; or he must bring the most ample testimonials from the presbytery in whose bounds his residence has chiefly been during that term.

The student is examined strictly and privately by the presbytery on his knowledge of the Greek and Latin languages, and of philosophy and theology.

In some presbyteries students are examined by a committee appointed for the purpose, and only *pro formâ* by the presbytery itself. This is a saving of time to the presbytery; and it is perhaps the best way to become acquainted with the attainments of the student, particularly if the committee examines upon a regular and consecutive plan. In the presbytery the questions that are put are often extremely desul-

* Two overtures respecting certificates have been transmitted to presbyteries by the Assembly 1829; 1st, that a certificate or certificates of attendance on the class of church history; 2d, that a certificate of attendance for one complete session on the Hebrew class, shall be produced to presbyteries along with the certificate or certificates already required, before any student is taken on trials.

tory; and the rapid transitions from subject to subject can scarcely fail to embarrass and bewilder a young man, however well he may previously have been prepared. The committee should be frequently changed and its plan of examination should be varied.

Circular letters.

If the presbytery is of opinion that the student is duly qualified in these particulars, this opinion is recorded in the minutes; the clerk is ordered to write circular letters to the different presbyteries within the bounds of the synod, informing them of the presbytery's intention to take the student upon trials, and bearing that the requisite certificate or certificates have been regularly produced; and nothing farther is done till the synod authorizes the presbytery to proceed.

Leave cannot be asked from a synod to take a student upon trials, until he has undergone the previous trials required by act 8, 1813.*

The circular letters must be written at least two kalendar months before the meeting of the synod. In those synods, which meet only once a-year, a student is entitled to have the circular letters written half a-year sooner than would otherwise be competent.

The leave of the synod being obtained to proceed with the trials of the student, the following is the order in which they are required to be taken; 1st, catechetic trials on divinity, chronology, and church history; 2d, a trial on the Hebrew and Greek languages; 3d, an exegesis in Latin on some controverted head in divinity; 4th, a homily in English; 5th, an

* Assembly 1824. Sess. 5. Macdonald. Synod of Ross.

exercise and addition; 6th, a lecture on some large portion of Scripture; 7th a popular sermon.

It is the practice of many presbyteries to require the student to draw up an account of some portion of the history of the church, besides subjecting him to the catechetic trials on church history. On the subject of the several discourses delivered by the student it is competent for the presbytery to examine him if it sees cause.

Judgment of the Presbytery.

The trials being finished, the Presbytery takes a conjunct view of them, and if dissatisfied with them, remands the student to his studies, or appoints new trials for him to undergo, or refuses altogether to license him to preach the Gospel. Its opinion, whether favourable or unfavourable, is recorded. If it is favourable, the following questions are put to him:

Questions.

1. Do you believe the Scriptures of the Old and New Testament to be the word of God, and the only rule of faith and manners?

2. Do you sincerely own and believe the whole doctrine of the Confession of Faith, approven by the General Assembly of the National Church, and ratified by law in the year 1690, and frequently confirmed by divers acts of Parliament since that time, to be the truths of God, contained in the Scriptures of the Old and New Testament, and do you own the whole doctrine therein contained as the confession of your faith?

3. Do you sincerely own the purity of worship, presently authorized and practised in this church, and asserted in act 15th General Assembly 1707, entitled, Act against innovation in the worship of God; and do you also own the Presbyterian government and discipline now so happily established in this church; and

are you persuaded that the said doctrine, worship, and discipline, and church government, are founded upon the Holy Scriptures, and agreeable thereto?

4. Do you promise that, through the grace of God, you will firmly and constantly adhere to, and in your station, to the utmost of your power, assert, maintain, and defend the said doctrine, worship, and discipline, and the government of this church, by kirk-sessions, presbyteries, provincial synods, and general assemblies?

5. Do you promise that, in your practice, you will conform yourself to the said worship, and submit yourself to the said discipline and government of this church, and you shall never endeavour, directly or indirectly, the prejudice or subversion of the same?

6. Do you promise that you shall follow no divisive course from the present establishment in this church?

7. Do you renounce all doctrines, tenets, or opinions whatsoever, contrary to, or inconsistent with, the said doctrine, worship, discipline, and government of this church?

8. Do you promise that you will subject yourself to the several judicatories of this church, and are you willing to subscribe to these things?*

Licenee. Having given satisfactory answers to these questions, the student subscribes the formula, in which the substance of the questions is embodied. The act against simony, Act 8, Assembly 1759, is then read to him in presence of the presbytery; the moderator is appointed to license him to preach the Gospel; and the clerk is ordered to furnish him with an extract of his licence.†

* Act 10, Assembly 1711. † Act 8, Assembly 1813.

Formula. The formula must be subscribed before licence is obtained; and presbyteries are not allowed to use any other formula but that which is prescribed by act 10, Assembly 1711.*

Students from universities out of this church. Students, who have attended Protestant universities, not within the bounds of this church, may be proposed for trials. They must produce satisfactory testimonials from the professors of these universities. The time of their attendance is computed in the same manner, as if they had prosecuted their studies in any of the universities within the bounds of this church. But they must have been at least six months in Scotland, before they are admitted to the trials previous to the writing of the circular letters.†

Dissenters. Dissenting teachers applying to be taken on trials for licence, are not admitted to trials without the knowledge and authority of the supreme ecclesiastical judicatory.‡

Blind person. A blind person cannot be taken on trials, without first consulting the General Assembly upon the subject.§

Deaf. In the case of a person affected with deafness applying to be taken on trials, reference was made to the General Assembly, before the synod allowed the presbytery to proceed.‖

* Assembly 1717, Session 13.—Craig, Presbytery of Auchterarder.

† Act 8, Assembly 1813, section 7.

‡ Assembly 1805, Session 9.—Eadie, Synod of Glasgow and Ayr. Assembly 1824, Session ult.—Muir, Synod of Dumfries.

§ Act 6, Assembly 1761. Assembly 1815, Session 5.—Thomson, Presbytery of Glasgow. Assembly 1829, Session 9.—Maclean, Presbytery of Mull.

‖ Assembly 1823, Session 6.—Gordon, Synod of Aberdeen.

Transference of trials.

It is competent to a presbytery, at the request of a student before them, to transfer to another presbytery the receiving his public trials, or any part thereof. But this transference cannot be made if leave has not been obtained from the synod to take the student upon trials.*

Probationers to be registered and reported.

Probationers, residing for two months within the bounds of any presbytery, are required, within that time, to present their licence to the presbytery, that their names, and the names of the presbyteries which licensed them, may be marked in the register. And presbyteries are required to report annually to the General Assembly the names of such students as are presently under trials before them, and the names of all probationers residing within their bounds.†

Process against probationers or ministers.

No process against a minister or probationer can be instituted in a kirk-session. It belongs to presbyteries to receive and investigate charges against their characters.‡

Much caution is requisite in entering on such a process, on account of the station of a minister, and the effect of the process on his usefulness. It is not commenced unless there be a complaint given in against a minister, with some account of its probability, by a person or persons of good report, who undertake to make out the libel; or unless the *fama cla-*

* Act 8, Assembly 1813, section 6. Assembly 1824, Session 5. —Macdonald, Synod of Ross.

† Act 3, Assembly 1697. Act 9, Assembly 1736.

‡ Form of Process chap. vii. 1.—Act 9, Assembly 1745. Assembly 1814, Session 9.—Malcolm, Presbytery of Auchterarder.—Tulloch, Synod of Ross.

mosa against a minister be so great, "as that the presbytery, for their own vindication, see themselves necessitate to begin the process, without any particular accuser."

Fama clamosa. When there is such a *fama clamosa*, the presbytery's first business is to inquire into the rise, occasion, broachers, and grounds thereof.

Resolution to libel. If it appears to a presbytery, after this inquiry, that there should be a process against a minister, and if no private party come forward to institute it, they resolve to serve him with a libel. Before coming to this resolution, they should be satisfied that there is evidence of the facts charged against him. A libel cannot be sustained, which rests only upon hearsays.*

A presbytery is not entitled to begin a process against a minister, or to serve him with a libel, unless there is a *fama clamosa* against him.†

"An appeal from a resolution of a presbytery to serve a libel is nugatory, because they are the judges whether they see themselves necessitate, for their own vindication, to take this step; because it subjects them to responsibility, and puts the pannel in the regular way of establishing his innocence."‡ In one instance an appeal from such a resolution was taken and sustained. It appeared to the General Assembly that the conduct of the minister libelled had been imprudent and irregular, rather than criminal, and that,

* Assembly 1755, Session 9.—Mackenzie, Presbytery of Dingwall.

† Assembly 1797, Session 5.—Butter, Synod of Perth and Stirling.

‡ Manuscript Note by Principal Hill.

therefore, it was unnecessary to give him a libel. By appointment of the Assembly he was rebuked by the moderator.*

Libel, the only way of proceeding.

The conduct of a minister may be inquired into by his presbytery, when it is considered to have been in any way incorrect. Such an inquiry is necessary in order to serve him with a libel; and it may often prevent that ulterior step, either by bringing the minister to an acknowledgment of his error, or by affording him an opportunity of giving to the presbytery a satisfactory explanation of his conduct. But a minister cannot be proceeded against except by serving a libel upon him. It is not competent to admit to proof facts stated against him in the way of petition; nor is any sentence pronounced against him legal, which has not been preceded by a regular libel.†

Framing of the libel.

In drawing up a libel, care must be taken, not only to state distinctly the facts charged against a minister, but also to condescend on the time and place, when, and where the facts are alleged to have been committed. The time mentioned should in no case exceed the period of one year.‡

A libel raised by a presbytery, must be subscribed by the moderator and clerk.‖

When a libel against a minister has been duly framed and considered by the presbytery, an order is given to cite him before it, and to furnish him with a

* Assembly 1765, Session 6.—Park, Presbytery of Hamilton.

† Assembly, 1818, Session 8, and Assembly, 1826, Session 4.—Russels, Presbytery of Lochcarron.

‡ Assembly 1799.—Sess. ult. Nivison, Presbytery of Penpont.

‖ Assembly, 1812, Session 5.—Playfair, Presbytery of St. Andrews

full copy of the libel, and with a list of the witnesses' names to be led for proving thereof.

Citation to minister. If the minister is present, a citation to him *apud acta* is peremptory. A citation left at his dwelling-house must be in writing, bearing the date when given, and the names of the witnesses to the giving thereof. It must be left at least ten free days before the day of compearance; and a regular execution of the citation in writing must be returned by the officer to the presbytery. If the minister cited fails to appear, a new citation is given to him at his own church, when the congregation is met; and if this also is ineffectual, he is holden as confessed.

The purpose of furnishing the minister with a copy of the libel, and a list of the witnesses' names, is, to give him an opportunity of answering the libel, and of preparing his defences, and his objections against witnesses. Hence it is not competent to withdraw the original libel, and to present a new one.* Neither is it competent, at any time in the prosecution of the libel, to serve an additional list of witnesses, and so prorogate the term for concluding the proof.†

List of witnesses. The list of witnesses must be regularly served on the person libelled, otherwise the libel cannot be proceeded with.‡

Relevancy of libel. If the minister appears according to citation, the libel is read over to him. His answers are also read. The relevancy of

* Assembly 1805, Session ult.—Keilor, Synod of Perth and Stirling.

† Assembly 1785, Session 6.—Maclaggan, Synod of Merse and Teviotdale.

‡ Assembly 1816, Session 8.—Malcolm, Synod of Perth and Stirling.

the libel is then discussed. This is indispensably the first proceeding. A libel cannot be taken to probation before the relevancy is discussed.*

The irrelevancy of some parts of a libel does not render the whole irrelevant, and does not stop procedure upon the other parts which are relevant.†

If the libel is found relevant, endeavours are used to bring the minister to a confession; and if he confess, and the offence be of a scandalous nature, the presbytery *instanter* depose him *ab officio*, and appoint him to make public profession of his repentance.

If the fact charged is denied after the relevancy is found, probation follows.

Probation. The minister libelled has a right to state objections to questions or witnesses in the course of the probation, and appeals or complaints with regard either to the admissibility of witnesses, or the competency of questions, sist procedure till the appeals or complaints are disposed of. Persons against whom relevant objections are made, and offered to be immediately proved, are not admitted as witnesses.‡

The minister has also a right, after probation is finished, to offer a proof of facts and circumstances tending to his exculpation.‖

If the libel is proven, the presbytery proceed to censure, as in the case of a confession.

* Assembly 1793, Session 8.—Dallas, Synod of Ross.

† Assembly 1806, Session 5.—Carmichael, Synod of Perth and Stirling. Assembly 1812, Session 5.—Playfair, Presbytery of St. Andrews. Assembly 1825, Session 8.—Macleod, Presbytery of Kintyre.

‡ Assembly 1815, Session 9.—Lockerby, Presbytery of Glasgow.

‖ Assembly 1812, Session 5.—Playfair, Presbytery of St. Andrews. Assembly 1825, Session 8,—Macleod, Presbytery of Kintyre.

If the errors charged against the minister are not gross or striking at the vitals of religion, he is to be dealt with tenderly, and the Synod or General Assembly may be advised with.

If the libel respect a multitude of smaller things laid together, the presbytery may see cause to order a presbyterial visitation of the parish to which the minister belongs.

Presbyterial visitation.

A visitation of a parish by a presbytery is a measure rarely resorted to now, although by Act 16, Assembly 1706, it is required to be frequently practised. The greater publicity which is given to all transactions in modern times, and the facility with which intercourse is maintained, and intelligence is transmitted through every district of the country, render it almost wholly unnecessary. Much of the business of a presbyterial visitation is always done at the ordination and admission of a minister; the state of the parochial schools is annually inquired into, and reported; so that it is almost solely a minister's personal or official conduct, into which the presbytery at its visitation would have to examine. Such an examination it is always a delicate and a difficult matter to conduct; and the disapprobation expressed by the Assembly 1796 of the manner in which a presbyterial visitation was managed will make presbyteries cautious how they proceed in this business.*

When a presbyterial visitation of a parish is appointed, notice of it is given from the pulpit ten free days before it takes place; and the heritors, elders,

* Assembly 1796, Session 5.—Gillanders, Synod of Angus and Mearns.

and whole congregation, are summoned to be present on the day of the visitation, and to acquaint the presbytery if they know any thing amiss in their minister, elders, and other office-bearers in the parish. After public worship the elders are examined upon oath; and the heads of families are interrogated in general. The visitation is concluded with prayer.*

It is not till a libel has been found to be proven, that any sentence can be passed upon the person libelled. During the dependence of a process against a minister, a presbytery is not entitled either to suspend him, or to prevent him from dispensing the ordinances of religion in his parish.† And whatever may come out in the course of the probation, a presbytery is not entitled to inflict any censure for which the libel does not conclude, more particularly if the libel is found to be not proven.‡

When a minister is assoilzied, the proceedings against him are not allowed to remain either in the record, or *in retentis*.‖

Deposition. If deposition is the sentence that follows, the act of deposing is always preceded by prayer. The church of the deposed minister is declared vacant from the day and date of the sentence of deposition, and the usual steps upon occasion of a vacancy are taken.

* Act, March 26, Assembly 1596. Act, Session 23, Assembly 1638. Act 10, Assembly 1646. Act 16, Assembly 1706. Steuart of Pardovan's Collections, Book I. Title 13.

† Assembly 1785, Session 6.—M'Laggan, Presbytery of Selkirk. Assembly 1812, Session 8.—Davie, Synod of Angus and Mearns.

‡ Assembly 1793, Session 8.—Dallas, Synod of Ross.

‖ Assembly 1818, Session 5.—Clark, Presbytery of Inverness. Session 9.—Lockerby, Presbytery of Glasgow.

The sentence of deposition cannot be pronounced by a presbytery in absence of the minister to be deposed.* In 1793, a case of libel came before the General Assembly by appeal from the presbytery of Kirkcudbright. Neither the sentence of the presbytery nor the grounds of appeal are given. But the finding of the presbytery was to the effect, that the minister libelled was not to be deposed. Some of the elders and heads of families of his parish were the appellants. He himself was incarcerated by the civil power. An objection was taken to proceeding with the appeal in his absence. But this objection was over-ruled; and the assembly, notwithstanding his absence, reversed the sentence appealed from, and deposed him from the office of the holy ministry.†

A minister deposed for immorality cannot be restored to his former charge, in any circumstance whatsoever, without the special authority of the General Assembly appointing it.‡

Demission. If a minister demits his charge, the presbytery judges whether the demission should be accepted or not. ‖ It is not competent for the presbytery to accept of the demission, if the minister has pursued schismatical and divisive courses. § In that case, the presbytery consults the commission, as it sees cause, calls the minister to account, proceeds against

* Assembly 1755, Session ult.—Moncreiff, Presbytery of Zetland.

† Assembly 1793, Session 7.—Macnaught, Presbytery of Kirkcudbright.

‡ Assembly 1748, Session 6.—Declaration in the Case of Adam, Presbytery of Glasgow.

‖ Assembly, 1799, Session 6.—Ewing, Presbytery of Edinburgh.

§ Assembly, 1799, Session 6.—Innes, Presbytery of Stirling.

him by way of libel, and censures him even to deposition.*

Vacant parish. When a parish becomes vacant by the death of the minister, the brethren who attend his funeral, assemble after it, and appoint some one of their number to preach in the church of that parish on the Lord's day following, and declare the church vacant from the day of the minister's death. They also direct him, unless the ordinary meeting of presbytery be near at hand, to intimate the vacancy to the patron of the parish; and they farther settle among themselves such supplies of ministerial service for the vacant parish as may be necessary till the meeting of presbytery. They make a minute of their proceedings, and report them to the presbytery. The presbytery never fails to approve of them, when they are conducted in this manner, and to enter them in the minutes. If the requisite intimations have not been given by the brethren, the presbytery orders them forthwith.

Supplies. Supplies are usually given once a fortnight for vacant parishes in the country. In towns it is frequently found to be expedient to give them oftener. They are appointed by consulting the convenience of members, or, which is the better way, by following the order of the roll, leaving it to members to make such arrangements with one another in private, as may enable them to obtemper the appointments of the presbytery with the least inconvenience to their parishes or themselves.

The presbytery, during vacancies or suspensions, has the right of free entrance to the churches within

* Act 6, Assembly 1708.—Act 4, Assembly 1739.

its bounds. The custody of the keys of churches lies in these cases with the presbytery. *

Settlement. When a parish has remained vacant for six months, dating the vacancy from the day of the minister's death, or deposition, or demission, or translation to another parish, and no presentation has been lodged with the presbytery, or with the moderator, or clerk, the right to present to the vacant parish belongs to the presbytery *tanquam jure devoluto*. †

Patron. A patron, in order to present to a vacant parish, must qualify to government, and an extract of his having so qualified must be given in to the presbytery along with the presentation; otherwise it cannot be sustained.

Presentation. A presentation must be in favour of a licentiate of this church, who also qualifies to government, and who is willing to accept of the presentation. Hence there must likewise be laid on the presbytery's table a letter of acceptance from the presentee, an extract of his having qualified to government, and, if he is not already an ordained minister in the occupation of another charge, an extract of his licence to preach the gospel.

It is not competent for the heritors of a parish to object to a presentation. ‡ The presbytery are the judges whether it is to be sustained; and, unless they find the presentee disqualified, they are "bound and astricted" to receive him on the presentation of an undoubted patron. ||

* Assembly 1828, Session 8.—Presbytery of Linlithgow.

† Act 7, first Parliament James VI. 1567.—Act 2, twelfth Parliament, James VI. 1592, c. 115.—Act, Queen Anne, 1712, c. 12.

‡ Assembly, 1797, Session 4.—Nivison, Presbytery of Penpont.

|| Act of Parliament, 1592.—Hill's View of the Constitution, p. 70.

Presentee. The presentee, if a probationer, is appointed to preach in the vacant parish on one or more Sundays, according to the practice of the presbytery; and a day is fixed, posterior to his preaching, on which a call to him from that parish is to be moderated in. Notice of this is directed to be given from the pulpit of the vacant parish, by a member of presbytery, at least ten free days before the meeting for moderating in the call takes place. *

Moderating in a call. At that meeting a sermon is preached by the member of presbytery who is appointed to preside; the people are informed, at the conclusion of public worship, of the presentation that has been lodged; and they are invited to subscribe a written call to the presentee to be their minister, and to encourage him by expressing their willingness to receive him in that capacity. The signatures of those who do so are attested as genuine by the ministers present; and the subscribed call is given in by them to the next meeting of presbytery.

The meeting for moderating in a call being usually, not an ordinary meeting of presbytery, but altogether *in hunc effectum*, it is not competent at it to receive objections to the presentee, although they are made in the form of a regular libel. †

The call being laid before the presbytery, and read, the first step is to concur with it. Whether the number of signatures attached to it was such as to make it a good and sufficient call, was long a difficult and an agitating question. But there is much less ceremony upon that point at present; and provided there are

* Assembly 1743, Session 5.—Lochbroom.
† Assembly 1793, Session 8.—Dallas, Synod of Ross.

signatures attached to a call, a presbytery does not hesitate to concur with it.

The dissatisfaction of a presbytery with the moral conduct of a presentee, does not warrant a delay in concurring with a call, or moderating in it. A libel, in proper form, is the only way of proceeding, where charges affecting the character are made. * And, judging by analogy, the same observation should hold in the case of dissatisfaction being felt by the presbytery with the views entertained by the presentee upon doctrinal points. This dissatisfaction the presbytery may have an opportunity of expressing in the course of the trials which the presentee has to undergo. But, as a presentee, if the preliminary steps have been taken, he has a right to be put upon these trials; nor does there seem to be any warrant for a presbytery, upon suspicion or even knowledge of his heterodoxy, to refuse to take him upon trials, unless a regular libel has been served upon him.

The call being concurred with, it is put into the presentee's hand, and he is asked if he accepts of it. On his doing so, the presbytery devolves on him the care of supplying the vacant parish with public worship. It is understood that, till his admission, the same measure of supply is expected from him, as the presbytery has been used to give.

It remains for the presbytery to judge of his qualifications. Trials of exactly the same nature with those which he underwent before obtaining his licence as a preacher, are prescribed to him; and these being finished to the satisfaction of the presbytery, he is

* Assembly, 1771, Session 7.—M'Master, Presbytery of Stranraer.

required again to subscribe the formula; the act against simony is read to him, a day is fixed for serving his edict, and another, at an interval of not less than ten days, for ordaining and admitting him to be minister of the parish.

If the presbytery is dissatisfied with the qualifications of the presentee, and rejects him on that account, the questions that are put to him, and the answers received from him in the course of his catechetic trials, and the remarks of the presbytery upon the discourses delivered by him as part of his trials, are taken down in writing, and the discourses themselves are laid on the table and doqueted by the moderator, that in the event of an appeal the whole may be transmitted to the superior court. In a case which was brought from the Presbytery of Hamilton in 1765, the General Assembly set aside the trials which had given occasion to the appeal, directed new ones to be prescribed, and enjoined the course mentioned above to be followed.* In another case in 1823, from the Presbytery of Alford, the General Assembly, after hearing parties at the bar, appointed a committee of their members to examine the presentee, and on the report of that committee sustained his trials, and enjoined the presbytery to proceed with his ordination.†

In two instances the General Assembly has found a want of Gaelic to be a complete disqualification for a presentee in parishes where Gaelic is spoken.‡

A licence to preach the gospel obtained without the

* Assembly 1765, Session 6 and 7.—Walls, Presbytery of Hamilton.

† Assembly 1823, Session 9 and ult.—Smith, Towie.

‡ Assembly 1772, Session 9, Aberfoil.—Assembly 1825, Session 5, Little Dunkeld.

bounds of this church also disqualifies a presentee; * and it is conceived that a want of physical powers for the proper discharge of the ministerial office would equally entitle a presbytery to reject a presentee as disqualified.† When a presentee is found to be disqualified, the presbytery orders intimation of it to be given to the patron of the parish, and an extract of the finding to be sent to him.

Ordination. On the day appointed for the ordination of the presentee, the presbytery meets before the celebration of public worship, receives the report of the minister by whom the edict was served, and directs the officer to proclaim, at the most patent door of the church, that if any one has objections to the life or doctrine of the presentee, the presbytery is ready to hear them. A formal libel is not required upon that occasion. But any objections that are made must be immediately proved to be valid. They are otherwise disregarded.

The officer having returned, and none appearing to object, the presbytery directs the officiating minister, who had been appointed to preach and to preside, to proceed with the ordination. Public worship commences. After a sermon suited to the occasion, he reads a narrative of the presbytery's proceedings in regard to the vacant parish since the vacancy occurred, and then calls upon the presentee, in face of the congregation, to answer the following questions appointed to be put to ministers at their ordination.‡

1. Do you believe the Scriptures of the Old and

* Act 9, Assembly 1779; Act 5, Assembly 1799; Assembly 1798, Session 5, Gary, Brechin; and Session 8, Legertwood.

† Hill's View of the Constitution, pp. 69, 70.

‡ Act 10, Assembly 1711.

New Testament to be the word of God, and the only rule of faith and manners?

2. Do you sincerely own and believe the whole doctrine contained in the Confession of Faith, approven by the General Assemblies of this church, and ratified by law in the year 1690, to be founded upon the word of God; and do you acknowledge the same as the confession of your faith; and will you firmly and constantly adhere thereto, and to the utmost of your power assert, maintain, and defend the same, and the purity of worship as presently practised in this national Church, and asserted in act 15, Assembly 1707, entitled, Act against innovations in the worship of God?

3. Do you disown all Popish, Arian, Socinian, Arminian, Bourignian, and other doctrines, tenets, and opinions whatsoever contrary to and inconsistent with the foresaid Confession of Faith?

4. Are you persuaded that the Presbyterian government and discipline of this Church are founded upon the word of God, and agreeable thereto, and do you promise to submit to the said government and discipline, and to concur with the same, and never to endeavour, directly or indirectly, the prejudice or subversion thereof, but to the utmost of your power, in your station, to maintain, support, and defend the said discipline and Presbyterian government by kirk-sessions, presbyteries, provincial synods, and General Assemblies, during all the days of your life?

5. Do you promise to submit yourself willingly and humbly, in the spirit of meekness, unto the admonitions of the brethren of this presbytery, and to be subject to them and all other presbyteries, and superior judicatories of this Church, where God in his providence shall cast

your lot; and that according to your power you shall maintain the unity and peace of this church against error and schism, notwithstanding of whatever trouble or persecution may arise, and that you shall follow no divisive courses from the present established doctrine, worship, discipline, and government of this church?

6. Are not zeal for the honour of God, love to Jesus Christ, and desire of saving souls your great motives and chief inducements to enter into the function of the holy ministry, and not worldly designs and interest?

7. Have you used any undue methods, either by yourself or others in procuring this call?

8. Do you engage, in the strength and grace of Jesus Christ our Lord and Master, to rule well your own family, to live a holy and circumspect life, and faithfully, diligently, and cheerfully to discharge all the parts of the ministerial work, to the edification of the body of Christ?

9. Do you accept of, and close with the call to be pastor of this parish, and promise through grace to perform all the duties of a faithful minister of the gospel among this people?

Having obtained from the presentee, by his answers to these questions, the requisite declarations, promises, and engagements, the presiding minister invests him, "with the full character of a minister of the gospel, conveying to him, by prayer, and the imposition of the hands of the presbytery, all the powers implied in that character." He then, in name of the presbytery, receives and admits the newly ordained minister to be minister of the vacant parish; and after giving him the right hand of fellowship, in which he is followed by all the members present, he returns

to the pulpit, and earnestly and affectionately exhorts, first, the newly ordained minister to watch over the flock committed to his care; and secondly, the people to be respectful to their pastor, and careful to profit by his instructions. Public worship being concluded, the proceedings of the presbytery at the ordination are entered in the minutes; the name of the newly ordained minister is added to the roll; and, the heritors and elders of the parish having been requested to attend, inquiries are made into the state of the session, the state of the church, the state of the manse, the amount of the stipend, whether there is a decreet of locality for it, the salary of the schoolmaster, and the mode in which the poor are provided for. The meeting of presbytery is then concluded, as it began, with prayer.

Translation. If the minister of another parish is presented to a vacant parish, his qualification to government, and his letter of acceptance must be laid on the presbytery table along with the presentation. There is no injunction given to him to preach before the congregation as in the case of a probationer. A call to him is immediately appointed to be moderated in, according to the form mentioned above. If he is already a member of the presbytery he is afterwards directed to intimate from his pulpit, that there is a call to him from another parish, and an intention to transport him there; and, at the same time, to summon such of his parishioners as wish to defend their right to their minister to attend the presbytery on a particular day, when the case is to be heard. The minister himself is summoned *apud acta*, or by letter, if he does not happen to be present.*

* Act 7. Assembly 1704.

If the parish attends and urges its right to retain its minister, the presbytery judges between it and the competing parish. In former times, and even at a recent date, transportations were not always allowed.* If there is no appearance on the part of the parish, and if the presbytery is satisfied with the reasons assigned for the proposed transportation, a sentence is pronounced, by which the minister's relation to the parish over which he presides is terminated; that parish is declared to be vacant by his removal, and he is translated to the other; the day of his admission there is fixed, and his edict is appointed to be served. This proviso is always added, that he continues minister of the one parish, until he is admitted minister of the other.

If he belongs to a different presbytery, the presbytery which has received the presentation and the call in his favour, commissions some of its members to repair to that presbytery, to lay before it the call, and an account of the presbytery's proceedings, and having shown grounds for transporting the presentee from the one charge to the other, to request that the presbytery, under whose jurisdiction he is, will take the necessary steps for effecting his removal. The reasons of transportation are committed to writing, that a copy of them may be sent with the other papers to the minister's parish. The same steps mentioned above are ordered to be taken. And if no sufficient objections are made to his removal, the presbytery to which he belongs releases him from his charge, declares his church vacant from the day designed for his admission, or the day on which he shall be admit-

* Assembly 1794, sess. 5. Molleson, Dunsyre.

ted to the other parish, and appoints him to wait for, and obey the orders of the presbytery where the charge lies to which he is transported, as to the time of his admission thereto. Notice of these proceedings being forthwith sent to the presbytery where the vacant charge lies, the day of admission is fixed, and the edict is ordered to be served.*

The act of ordination is not repeated at the admission of a minister to a new charge. But he is required, in face of the congregation, to answer again the questions which were put to him at his ordination; and having renewed the declarations, promises, and engagements, which he then made, he is received and admitted minister of the parish, and exhortations are addressed, as in the case of a newly ordained minister, both to him and to his flock.†

Union of offices. A professor in an university who is presented to a parochial charge, not situated in the city that is the seat of that university, or in the suburbs thereof, is required, within nine months after his being admitted to the said charge, to resign his professorship, and to produce to the presbytery, at its next ordinary meeting thereafter, a certificate that his resignation has been accepted. And a minister of a parish who is presented or elected to a professorship in any university which is not situated in the city, or the suburbs of the city to which his parish belongs, is required, at the first ordinary meeting of presbytery which shall take place after the lapse of six months from the date of his induction into the professorship,

* Act Assembly 1642. Act 6, Assembly 1694. Pardovan's Collections, book i. title 2, 12, 13. † Act 10, Assembly 1711.

to resign into the hands of the presbytery his parochial charge.*

Ordination or admission to a parish, *ipso facto*, makes the minister, ordained or admitted, a member of the presbytery and synod in whose bounds his parish lies.†

Ordination without relation to a particular charge, is discouraged by the church.‡ But presbyteries are allowed to ordain ministers going to foreign parts, provided the call to them is not for a limited period, and provided there is some reasonable prospect of such permanent provision being allowed as is essentially necessary for the decent and respectable maintenance of an ordained minister of the Church of Scotland.§

Chapels of Ease. It belongs to presbyteries to receive petitions respecting the erection of chapels of ease, and to inquire into the circumstances on which the petitions are founded, and the plan proposed for the constitution of the chapels. But the whole must be reported from the minutes to the General Assembly; nor can any final judgment be pronounced on a petition for a chapel of ease till special directions have been received therein from the Assembly, at whose bar all parties having interest are allowed to be heard.

The proceedings from the commencement are ordered to be slow. The petition for the erection of a chapel of ease lies on the table of the presbytery till the next ordinary meeting. The presbytery then consider whether, from the circumstances in which the petition is presented, the erection of the chapel is ne-

* Act 6, Assembly 1817. † Act 5, Assembly 1754.
‡ Act 9, Assembly 1784.
§ Assembly 1827, Sess. ult. Committee on Canada Petitions.

cessary or expedient. If it appears to them otherwise they reject the petition. If not, they cite the minister and kirk-session of the parish within which the chapel is intended; and they summon, by edictal citation, the heritors of the parish, and if there is a burgh, the magistrates of the burgh, to attend the next meeting of presbytery for their interest in the subject of the petition. Parties are heard at this third meeting, and the presbytery then proceeds to ascertain the circumstances on which the petition is founded; the facts stated as reasons for the necessity or expediency of the chapel intended; the general plan of the chapel itself; the estimate of the expense to be incurred in completing it; and the whole of the constitution under which it is to be managed. This part of the business is now rendered extremely simple, as the articles in the constitution of any proposed chapel are required to be drawn up and submitted to the General Assembly in the following order.* 1. The property of the chapel to be invested in whom. 2. To be exclusively for the use of a minister of the Church of Scotland. 3. Management and application of the seat rents. 4. If debt be incurred in erecting the chapel, how to be liquidated. 5. Managers and administration to be under inspection of the presbytery. 6. Manner of electing managers and supply of vacancies when they occur. 7. If a treasurer and clerk, how appointed and paid. 8. Amount of stipend. 9. What security for the same, and time of payment. 10. Plan of augmenting the stipend when necessary. 11. Collections, and application of the money collected. 12.

Constitution of Chapels of Ease.

* Act 10, Assembly 1826.

Who are to choose the first minister, and how long to have this power. 13. The manner of supplying vacancies after the chapel is permanently established. 14. Supply of the pulpit during vacancies. 15. Names of candidates to be laid before the presbytery. 16. Certificates of candidates to be laid before the presbytery and judged of. 17. Day of election how to be appointed, and mode of calling meetings for this and other purposes. 18. Election, letter of acceptance, certificate of having taken the usual oaths, and renewed bond of security to be laid before the presbytery. 19. Duty to be performed by the minister when inducted. 20. If a Gaelic chapel, what portion of the service to be performed in that language, and what in English. 21. Bounds within which he is to labour, if any are fixed. 22. When the sacrament is to be dispensed. 23. How persons are to be admitted to partake of the same. 24. Allowance for communion elements to the minister when the sacrament is dispensed. 25. Mode of letting the seats, and time when to be done. 26. Persons to be proposed, if any preference is to be given. 27. Precentor, by whom appointed, and with what salary. 28. Officer, by whom appointed, and with what salary. Any of the above particulars, which from the circumstances of the intended chapel are not required to be specified, may be omitted. And if it is necessary to introduce other particulars, they are to be added after those which have been enumerated.

Ministers of Chapels of Ease.

Chapels of Ease belong to the establishment, but their ministers are not constituent members of the church courts. They do not sit or vote in the presbyteries, and they cannot, consequently, go as ministers to synods or General Assemblies. Neither can they be sent to these courts

as elders, the Assembly having declared that ministers of chapels of ease, being in the habitual exercise of the functions of the ministerial office, are thereby disqualified from sitting as lay-elders in the judicatories of this church.* Upon the general principle laid down in this declaration, the assembly have uniformly acted.† This principle applies also to the missionaries upon the royal bounty, and to the ministers of the lately erected parliamentary churches.

Ministers of chapels of ease are included in the provisions of act 6, Assembly 1817, anent union of offices.

Presbyteries are not at liberty, notwithstanding any circumstances in which the minister of a chapel of ease may be placed, to admit any other person as minister of that chapel, till there be a vacancy by the death or demission of the incumbent, or by a sentence of the church courts removing him from that situation.‡

Overtures.

It is provided that acts, which are intended to be binding rules and constitutions to the church, must first be proposed as overtures to the General Assembly, and being there passed as such, must be transmitted to the consideration of the several presbyteries, that their opinions and consent may be reported to the next General Assembly.§ It is of great importance to the interests of the church, that presbyteries should show diligence in this respect, and not allow overtures to lie from year to year on their tables, as no overture can be passed into a law till the more general opinion of the church is found to agree thereto.

* Assembly 1796, Session 4, Reference, Synod of Aberdeen.

† Assembly 1753, Act 4.—Assembly 1789, Session 7. Presbytery of Abertarph. Assembly 1829, Session 3, Irving, Annan.

‡ Assembly 1808, Session 4. Reference, Presbytery of Dunkeld.

§ Act 9, Assembly 1697.

When overtures, transmitted by the Assembly have been received, the presbytery, at a previous ordinary meeting, appoints the particular day on which such overtures are to be considered.* In like manner, when overtures originate with a presbytery, the member who proposes them gives notice, at a previous ordinary meeting, of his intention to do so.

In expressing an opinion upon an overture, nothing more is necessary than simply to approve or to reject it. Any changes that are suggested upon it are generally disregarded by the Assembly. The adoption of them is equivalent to the transmission of a new overture. The proposition transmitted for the consideration of presbyteries remains as it was sent, till the more general opinion of the church has been obtained upon it in the state in which it is transmitted. Hence the more simple and unencumbered that an overture is, the better.

Separate Register.

In consequence of the act of parliament for raising and establishing a fund for a provision for the widows and children of the ministers of the Church of Scotland, &c. presbyteries are required to keep a separate register, for recording the names and parish churches of all the ministers of the respective parishes, the dates of their ordination or admission, the dates of their marriages, the names of their children, the time of their children's death, the time of the deaths of ministers, the names of their respective widows, and the dates of the marriages or deaths of ministers' widows residing within their bounds. This register is regularly signed by moderator and clerk, and submitted, with the minutes of presbytery, to the examination of the synod; and the annual lists are

* Assembly, 1797, Session 8.

made up from it, which must be transmitted from presbyteries to the trustees for managing the fund. *

Commissioners to the General Assembly.

Presbyteries send representatives to the General Assembly according to the number of parishes within their bounds. Collegiate kirks, where there use to be two or more ministers, are understood to be as many distinct parishes as they have ministers. Professors of divinity in any university within the bounds are members of the presbytery, if they be ministers, and are considered as so many additional parish ministers.

Presbyteries consisting of twelve parishes, or under that number, send two ministers and one ruling elder.

Presbyteries consisting of eighteen parishes, or under that number but above twelve, send three ministers and one ruling elder.

Presbyteries consisting of twenty-four parishes, or under that number, but above eighteen, send four ministers and two ruling elders.

Presbyteries consisting of more than twenty-four parishes, but not exceeding thirty, send five ministers and two ruling elders.

Presbyteries exceeding thirty parishes, send six ministers and three ruling elders.†

Election.

The election of the representatives is made at least forty days before the meeting of Assembly, and within a month preceding the first of the forty days, except in the case of presbyteries lying in the northern and western isles. The day of election is appointed, and the appointment is entered in

* Act 4, Assembly 1744.—Act 4, Assembly 1757.
† Act 5, Assembly 1694. Act 6, Assembly 1712.

the minutes, at a meeting at least ten free days before the election; and the election must take place between the hours of one and eight o'clock in the evening.*

It is competent for any one who is elected to decline, and for the presbytery to make an after election of another commissioner in his room.

Commissions. There are printed forms according to which the commissions, in the case either of an original or of an after election, must be made out. The commissions are signed by the clerk; and they are attested by either the moderator or the clerk.

The presbytery has to attest the commissions given to elders by any university or burgh within its bounds. Along with the commission from a burgh there must be produced to the presbytery an attestation from the kirk-session to which the burgh belongs.

When there is an after election, the extract of the first, as well as the second election, must be transmitted to the General Assembly.†

The commissions should bear that the ministers elected have signed the formula enjoined by Act 10, Assembly 1711, and that the ruling elders have signed the formula prescribed by Act 11, Assembly 1694. But numerous instances have occurred in which, notwithstanding the omission of this statement, the commissioners have been allowed to supply this defect, by signing the one or the other formula at the bar of the Assembly.

Every commissioner from a presbytery is entitled to have an extract of the presbytery's commission to its representatives; and any one valid commission is suf-

* Act 10, Assembly 1783.

† Assembly 1809, Session 3 and 6. Lochmaben.

ficient to entitle the representatives to their seat in the Assembly. The commission first lodged by a member of the presbytery of Jedburgh in 1829 was rejected, because it had not been attested. At a subsequent meeting of the Assembly, a commission from the same presbytery was presented, in which there was no defect, and the names of the commissioners were added to the roll.

In former times it was an arduous undertaking for a minister to attend the Assembly, and if he went, when deputed for that purpose by his presbytery, he deserved credit for the discharge of his duty. The case is now much altered. The situation of a member of Assembly has, in a great majority of instances, become an object of desire. And, hence, to prevent collision of interests, and to give to all the members of presbyteries the same opportunity of attending the supreme ecclesiastical judicatory, the system of rotation has been very generally adopted in sending commissioners to the General Assembly.

Ordinary meetings of presbytery.

The election of the members of Assembly renders two meetings of presbytery indispensable in the course of the year. The number of meetings held depends usually upon the local business to be transacted. Some presbyteries meet once a-month. Presbyteries have the power of meeting when they please. But it is necessary, before the meeting is closed, to resolve when the next meeting is to be held, to enter this resolution in the minutes, and to cause it to be publicly intimated by the officer; otherwise the presbytery is defunct, and, without the intervention of the superior court, has no power to reassemble for business.

Pro re natâ meeting.

A *pro re natâ* meeting of presbytery is called by the moderator, either on his own motion, when any thing has occurred which appears to him to require the assembling of the brethren before the time of the ordinary meeting; or on application made to him by some of the members of presbytery, with a statement of the grounds on which the application is made. He may refuse to grant it; but the responsibility of doing so rests upon him, and at the first ordinary meeting the whole of the circumstances will be brought before the presbytery. When a *pro re natâ* meeting is called, letters of intimation, both of the day of meeting, and of the subject to be discussed, are written to every member. The notice must be sent to them a sufficient time before the day appointed for the meeting. The moderator states at the meeting the circumstances which led him to call it; and the presbytery, in the first place, pronounces its judgment upon his conduct in doing so. No other business but that for which the meeting was called can be transacted at it.

The clerk and the officer of the presbytery are of its own appointment.

SECTION IV.

THE PROVINCIAL SYNOD.

A PROVINCIAL synod is composed of three or more presbyteries, as that matter happens to be regulated by

the General Assembly. The time also, and the place of the synod's meeting are fixed by the Assembly. There are fifteen synods in the church of Scotland, and most of them meet twice in the year.

Constitution. The synod is opened by the moderator of the preceding synod, who preaches a sermon suited to the occasion. After public worship is finished, he intimates that the synod is to meet, and he constitutes it by prayer. The roll of the synod is then made up, the presbytery which stood first on the roll at the preceding synod being put last, and that which was in the second place being called first. "Every member of all the presbyteries within the bounds of the synod is a member of that court, and the same elder, who had last represented the kirk-session in the presbytery, is its representative in the synod;" and, on producing a proper extract of his election under the hands of the session-clerk, is entered on the roll.

Correspondents. "Neighbouring synods correspond with one another, by sending one minister, and one elder, who are entitled to sit, to deliberate and to vote with the original members of the synod to which they are sent."* They must have a regular commission from their own synods to act as correspondent members, and on its being produced and read, their names are added to the roll.†

Correspondent members are sent only to neighbouring synods. It is unconstitutional to send them to presbyteries within their bounds.‡

Correspondent members are appointed at the first

* Hill's View of the Constitution, p. 83.
† Assembly 1829, sess. 9. Synod of Glenelg.
‡ Assembly 1812, Session 7. Grant, Synod of Orkney.

diet or meeting of the synod. Every synod must have at least two meetings for the dispatch of business.

Moderator. The roll being made up, a new moderator, who must be a minister, is chosen. The mode of choosing him varies in different synods. The general principle is to take the moderator from the oldest of those ministers who have not filled the chair. The moderator is changed at every periodical return of the meeting of synod.

Order of business. The minutes of the last meeting of synod are then read over, and such matters as require to be noticed are taken up in their order. A committee is appointed for receiving such overtures as it is proposed to submit to the consideration of the synod, and for judging whether or not they should be transmitted. Another committee is appointed for like purposes in regard to bills, references, and appeals. The chief business of the synod is thus prepared by these committees, and can come to it only through them. Committees are also appointed to revise such presbytery books as are laid on the table, it being the law of the church that every presbytery within the bounds shall produce its registers to the provincial synod to have them examined and attested.* Other committees are appointed as the synod sees cause, in order to simplify or expedite its business.

The clerk gives notice of the reports received from presbyteries respecting students to be taken on probationary trials, and these are ordered to be considered at the next sederunt.

If presbytery clerks fail to forward the extract of a student's certificates, it is competent for the student

* Act 9, Assembly 1700.

himself, or any member of synod, to lay the extract before the synod. The extract may be presented at any diet of the synod which is not the last.*

Intimation is publicly made of the time at which the next diet is to commence, before the adjournment takes place.

Committees. The committees meet in the interval between the diets.

The moderator and clerk are *ex officio* moderator and clerk of the committee for overtures. The other committees choose their own moderators and clerks.

Petitions are presented to the committees for overtures and bills, along with any papers which it is desired to bring under the notice of the synod, praying that the same may be transmitted. It is competent for these committees to refuse to transmit any papers, the contents of which they do not approve of, or with which they deem it unnecessary to occupy the time of the synod; and when there is any informality in the mode of presenting or drawing up the papers, it is their duty to refuse to transmit them. But the parties who lodge the papers have the right of appeal, and so may bring the conduct of the committees, and ultimately the subject matter of the papers, before the synod.

The committees draw up regular minutes, in which they state particularly the whole of their transactions, and these minutes constitute their report to the synod.

The committees for revising presbytery registers commence their revision from the last attestation of the synod, and name in their report the page or date from which they begin, and the page or date to which

* Act 8, Section 8, Assembly 1813.

they bring down that revision. They have to observe not only that the registers are exact and well kept, but also whether there is any thing truly censurable in them, and in itself material with respect to discipline, and if there appears to the synod to be such censurable matter, it is recorded as censured both in the synod book and in the attestation.* A form of attestation, where there is nothing censurable, is given in act 9, Assembly 1700. The report of the committees for revising registers is presented in writing, and signed by the members.

Second diet of Synod.

At the next diet of the synod, after the minutes of the former meeting have been read, the extracts of the certificate or certificates laid before presbyteries in favour of students proposed for probationary trials are read, and the synod judges of the expediency of allowing the several presbyteries to admit the different students to trials. The report of the committee for overtures is then called for, and whatever it contains for the discussion of the synod is first taken up.

When overtures are transmitted by a synod or a presbytery to the General Assembly, it is usual to appoint the members of the synod or the presbytery who may be members of Assembly, to support the overtures in that venerable court. But these members of synod or of presbytery are not thereby placed at the bar of the Assembly. In the discussion of overtures there are no parties. All the members of Assembly have the same right to speak and to vote upon the subject of any overtures that are introduced, only through

* Act 9, Assembly 1700. Act 9, Assembly 1706. See Section I. Minutes.

courtesy, those members who are connected with the quarters from which overtures have originated, are generally allowed to speak first, and to explain the grounds upon which the overtures have been transmitted.

The report of the committee for bills is next called for, and the references, complaints, or appeals from presbyteries, or private parties, are severally heard and determined. Then, in succession, the reports of the committees for revising presbytery registers, and of the other committees that may have been appointed, are taken under consideration.

Privy censures. Privy censures are enjoined in all the inferior church courts, and in former times were duly attended to. In synods each presbytery was removed in succession; the remaining members conferred about the conduct of the absent presbytery, in so far as it was known to them; and admonition, if it appeared necessary, was given in the spirit of brotherly love to the presbytery when it was again called in. The practice of privy censures has now gone into disuse, although notice is taken of them, it is believed, at every meeting of synod. It would be more becoming to omit the notice of them altogether, than to profess to delay them from one meeting of synod to another, without any intention of ever resuming them.

When the business of the synod is finished, a committee is appointed to revise the minutes before they are written out *in mundo*. Intimation is publicly made of the time when the next meeting of synod is to be held, and of the place of its meeting; and the moderator closes the synod with prayer.*

* Pardovan's Collections, Book i. Title 14.

The proceedings or minutes of every synod must be signed by both the moderator and the clerk thereof. And synod books, completely filled up, are required to be produced yearly to the General Assembly in order to their being revised.*

The clerk, and the officers of the synod are of its own appointment.

Pro re natâ meeting.

Meetings of synod *pro re natâ* are occasionally, but very rarely held. The act of Assembly 1647 asserts the right of assembling synodically as well *pro re natâ* as at ordinary times. There are instances in which such meetings have been held by appointment of the General Assembly. In one case a party was empowered by it to apply for a *pro re natâ* meeting of synod, if he saw meet.† In another case the meeting was to be called on the application of any three ministers.‡ It appears from the records of the synod of Glasgow and Ayr that in very few instances was a *pro re natâ* meeting held, in which power had not been previously given by the synod to call such a meeting. And it appears farther from these records, that, in every instance, except one, the *pro re natâ* meeting was held with the same forms, and in the same manner, as an ordinary meeting of synod.

The members of every presbytery within the bounds being supposed to be present at the synod, it is competent for any of the presbyteries to hold a special meeting, under the authority of the synod, intimation being publicly given of the meeting at some one of the diets of synod.

* Act 11, 1698.
† Assembly 1724, Sess. 6, M'Cormick, Synod of Fife.
‡ Assembly 1730, Sess. 13, Chalmers, Synod of Aberdeen.

SECTION V.

THE GENERAL ASSEMBLY.

THE General Assembly meets annually in the month of May, and continues its sittings for ten days, beginning them always on Thursday. It consists of representatives from the presbyteries, royal burghs, and universities in Scotland, and from the churches in the East Indies that are connected with the Church of Scotland.*

Seventy-eight presbyteries send, Ministers	200		
Elders .	89		
			289
Sixty-seven royal burghs send, Elders . .			67
Five universities send, Ministers or Elders .			5
Churches in India send, a Minister and an Elder			2
			363

It appears then, that, if all the members of Assembly were present, the majority would be ministers.

Commissions. The commissions to these representatives are required to be lodged with the clerk of Assembly, the night at least before the first diet or meeting thereof, in order that the rolls may be timeously made up. Commissions not delivered then must be put into his hands in the intervals betwixt the after diets, and not in presence of the Assembly.†

* Assembly 1814. Assembly 1821, Sess. 5.
† Act 4, Assemby 1694 .

"The General Assembly is honoured with a representation of the Sovereign by the Lord High Commissioner, whose presence is the gracious pledge of protection and countenance to the established church, and the symbol of that sanction which the civil authority of the state is ready to give to its legal acts.

"The Church of Scotland claims the right of meeting in a General Assembly, as well as in inferior courts, by its own appointment; but it also recognises the right of the supreme magistrate to call synods and to be present at them; and the two rights are easily reconciled when there subsists between the church and the state that good understanding, which the true friends of both will always be ready to cultivate."

During the long period of 138 years there has been no interference in the exercise of these rights; and only two instances are on record in 1638 and 1692, in which the Commissioner, in opposition to the mind of the judicatory, dissolved the Assembly, without fixing a time for the meeting of another; and the Assembly continued its sittings, and, by its own intrinsic power, appointed the day when the next Assembly should be held.

The Lord High Commissioner takes no part in the proceedings of the Assembly; nor from what has been stated, is his presence absolutely necessary to the holding of the Assembly. When from temporary illness he is unable to attend, the business of the Assembly proceeds notwithstanding his absence. In 1798 it was not till the fourth session that the Commissioner appeared in the house. The king's commission to him had been laid on the table, and read at the opening of the Assembly.

When the Commissioner signifies a wish to retire,

and the business for the day has not been finished, or when the business is expected to extend to a fatiguing length, it is usual for the Assembly, out of consideration for him, to form itself into a committee of the whole house, by which means an adjournment takes place, the business proceeds, a report is given in at the next meeting, and the Assembly pronounces the deliverance which had been resolved on in the Committee.

Thursday. On the day appointed for the meeting of Assembly, a sermon is preached by the Moderator of the last Assembly, who intimates, at the conclusion of public worship, that the supreme ecclesiastical judicatory is about to sit, and afterwards opens its meeting by prayer.* The clerks read the roll of

* In noticing that the proceedings of a court, so highly respectable as the General Assembly, are commenced by an act of public worship, at which the representative of the Sovereign, and his numerous suite, and a large proportion of the clergy of Scotland are present, it is impossible not to express the deepest regret at the disturbance, which is too often experienced in the performance of that act. For the honour of our church, it should be conducted in the most solemn and impressive manner, and the intention evidently is, that it should be so. But the respect, which is usually shown to the house and the services of God, appears on that day to be entirely forgotten by those who are not actually within view of the preacher. The running to and fro in the entrances to the church, the clamour of voices, and the other noises that are heard, are most annoying to him and his hearers, painful in the extreme to every pious mind, and destructive of that attention which is due to the solemnities of divine worship, and the instructions of God's word. What an impression must a stranger to our church, who then only joins in our presbyterian services, have of the decorum with which they are performed! As a matter of police, it becomes the authorities of Edinburgh to prevent the occurrence of the bustle and noise which pervade the High Church on the occasion referred to. And among the arrangements which are annually made for conducting the business of the Assembly, and securing its respectability by the dignity and order of its proceedings, ought not the office-bearers of our church to make it a principal object, by their representations to the magistrates, or the

members which they have prepared, and one of the ministers upon that roll is chosen moderator.

Moderator. It is usual for the moderator of the last Assembly to propose his successor. Any member of Assembly may propose another candidate for the chair. In 1784, when there were two candidates, they were both proposed by the moderator. In the event of a contested election, the candidates are first called upon to give their votes.

When the office of principal clerk of Assembly has become vacant, the Assembly proceeds to the election of a clerk, immediately after the election of a moderator.* In the event of a vacancy in the office of sub-

influence which they themselves are able to exert, to effect the desirable measure of having the worship of God, at the opening of our supreme ecclesiastical judicatory, celebrated in such a manner as to conduce to his glory, and to the comfort and improvement of those who engage in it ?

There is much room for similar remarks in regard to the celebration of divine worship in the presence of the Lord High Commissioner, on the two Sabbath days during the sitting of the Assembly ; and it is earnestly to be wished that, if any thing is done to remedy the evils of the former case, something may also be attempted to secure, to those who preach before his Grace greater quietness in the discharge of their duty, and to those who hear them, the privilege of attending without distraction to the services of the sanctuary. Much of the evil, in this last case, undoubtedly arises from a multitude of idle people being attracted to see the Commissioner going in state to Church, and from their lounging about the street, while the military remain to attend him back again to where his levees are held. It may be impossible to redress it altogether; but at least the places which are sacred to the worship of God may be kept free from disturbance; and if the troops, instead of returning to their quarters in the time of divine service, must continue in the street, they may be stationed, not in the immediate vicinity of any church, but at some distance from it, as a cordon to prevent the occurrence of any thing improper.

* Assembly 1789, 1807, 1828, Sess. 1.

clerk, that vacancy is not supplied till a later period in the proceedings of the Assembly.*

"The first business of the new moderator is to receive a communication, from the throne, of the commission appointing the nobleman who delivers it to represent the Sovereign, and of a letter from the Sovereign to the General Assembly. After the royal commission and letter are read by the principal clerk, and ordered by the house to be recorded, the Lord High Commissioner addresses from the throne a speech to the Assembly, and the moderator, in their name makes a suitable reply.

Committees. "The court being thus constituted, a committee is appointed to prepare an answer to the King's letter." Another committee is appointed for revising commissions, censuring absents from the diets of the Assembly, naming ministers to preach before his Grace the Commissioner, and receiving lists of probationers in the several presbyteries. Both these committees meet on Thursday evening. The act 5th of Assembly 1819 for the better dispatch of business is then read; and a committee for overtures is named. A committee for bills, references, and appeals is also named and appointed to meet in the evening. The object of the Assembly in this appointment is to have the papers connected with every private cause laid on the table at its meeting upon Saturday. And for this purpose the same committee of bills is further appointed to hold a second meeting on the evening of Friday, and a third on the morning of Saturday, before the meeting of Assembly. All appeals, complaints, or references, not presented at one or other of these meet-

* Assembly 1802, 1828, Sess. 1.

ings are considered as deserted or fallen from. Other meetings of the committee of bills are granted only upon sufficient cause being shown, why the papers wished to be presented could not be lodged at the specified time.*

Friday. Friday is a diet spent in prayer; two ministers being requested by the moderator to follow him in offering up supplications to God. During the intervals of prayer, the moderator intimates to the ministers, who have been selected to preach before his Grace the Commissioner, the duty which they have to perform. The names of the members upon the committees for overtures and bills are read over. The committee for overtures is appointed to meet in the evening, and to receive the report of the committees for answering the king's letter, and for revising commissions. †

* See Section IV.—Committees for overtures and bills.

† The business of the General Assembly is, in some years, scarcely sufficient to fill up all the days during which it sits; and, therefore, it may be unwise to forestall any part of it, or to propose the transference of any part of it from the second week to the first. But may not an exception be made in regard to the two schemes recently devised and acted on by the Assembly, viz. for the advancement of education in the Highlands, and for the propagation of Christianity abroad? Independently of overtures and private causes, these schemes must always furnish subjects of an interesting nature, and, when there is a press of other matter, they cannot meet, according to the present arrangement, with all the attention to which they are entitled. Upon these grounds alone, it would be desirable to have them brought early into notice, at a time when the reports respecting them can be listened to at leisure. But as the successful prosecution of these schemes depends completely on the blessing of God, there seems to be a propriety in having them noticed on the Friday, when the prayers that are offered up might have a reference, not merely to the proceedings of the Assembly in general, but specially to these great and eminently Christian undertakings. The committees for these objects are continued from year

Saturday. Upon Saturday, the report of the committee for overtures is first called for. The answer which had been prepared to the king's letter is read and considered, and his Grace the Commissioner is requested to transmit it. The objections made to commissions next occupy the attention of the Assembly. The consideration of the remainder of the report of the committee for overtures is usually reserved till Monday; and the report of the committee for bills having been read, the Assembly proceeds to make arrangements for the hearing of causes, and the dispatch of business in the ensuing week.

Committees are appointed to revise the actings and proceedings of the commission of the last General Assembly; to revise the record for managing the Royal Bounty, or the L.2000 annually given by the king for the reformation of the Highlands and Islands of Scotland; and to audit the accounts of the procurator and agent for the church, and to receive all new applications for the public money. Such applications must be transmitted to the agent for the church, on, or before May first, yearly, that they may be laid by

to year, and their operations are never at an end. They have always, therefore, something to report; and their reports may be ready to be given in at the second session of the Assembly, as well as at any other. The day for prayer is not, indeed, a day for discussion. It would be unseemly to engage in discussion on such an occasion. But the reports might be received and read. They would be listened to then with undivided attention; and they might lie on the table till some day in the following week. On the details of management different opinions may arise, and explanations may be required of statements in the reports; and these opinions may be expressed, and the requisite explanations may be given, when the reports are afterwards taken into consideration. But in regard to the objects themselves, there is only one mind among the members of Assembly, and with one heart all would unite in commending them to the special protection and favour of Almighty God.

him before the procurator, who has to report upon them to the Assembly.* The reports of these committees are received at some subsequent diet of the Assembly.

Business week. Other committees are appointed as the business of the Assembly renders them necessary; as, committees for revising synod books, which books are called for on Monday; a committee for classing returns to overtures; a committee for classing returns from presbyteries relative to the examination of schools; a committee for naming members of the commission, and preparing instructions for them; a committee for managing the Royal Bounty, &c. &c. To all its committees the Assembly gives what directions it sees proper. The act fourth of Assembly 1713, is the rule to guide the revisers of synod books. Among other things which are there noticed, the visitors are instructed carefully to advert if the synod books be completely filled up and signed by the moderator and clerk; if the synod's proceedings be agreeable to the constitutions of this church, and acts of the General Assembly; and if the register be correctly written, &c. The visitors are also required to communicate their remarks on the books to some of the synod, and hear them thereupon, before they bring in the same to the Assembly.† A similar requirement is made in the case of the commission record; and the attestation to it is enjoined to be the same, *mutatis mutandis*, as the attestation to the synod books.‡

"In discussing business, the General Assembly has

* Act 6, Assembly 1763.
† Assembly 1706, Session 3, Assembly 1710, Session 3.
‡ Act 9, Assembly 1700, Act 8, Assembly 1706.

adopted some of the forms necessary in all great meetings, the observance of which, supported by the authority of the moderator, and the general feeling of the house is commonly sufficient to preserve a becoming degree of order. Upon a division, the sense of the house is collected by the names on the roll being called by one of the clerks, and the votes being marked by the principal clerk, under the eye of the moderator."

Before the roll begins to be called, the doors of the Assembly-house are shut, and they are not allowed to be opened again, till the judgment of the Assembly is declared.

"Counsel are heard at the bar of the Assembly, when it is judging private causes, but not when it is discussing overtures, which are matters of internal regulation."

Legislative power.

An overture, or a proposal to make a new general law, or to repeal or alter an old one, may originate with an individual, a presbytery, or a synod, or with the General Assembly, which in that case appoints the committee of overtures to meet and to frame one.

"The General Assembly may dismiss the overture, if they judge it unnecessary or improper; or may adopt it as it was sent; or may introduce any alteration which the matter or the form seems to require. If it is not dismissed it is transmitted by the General Assembly, in its original or its amended form, to the several presbyteries of the church for their consideration, with an injunction to send up their opinion to the next General Assembly, who may pass it into a standing law, if the more general opinion of the church

agree thereunto, that is, if not less than forty presbyteries approve."

"When the immediate enactment of the new law proposed in an overture, appears essential for the good of the church, the General Assembly exercises the power of converting the overture into what we are accustomed to call an interim act;* and it is acknowledged by all who understand our constitution, that, till the meeting of the next Assembly, such temporary enactments are binding upon all the members of the church."

Executive power. In the exercise of its supreme executive power, "the General Assembly often issues peremptory mandates, summoning individuals and inferior courts to appear at its bar. It sends precise orders to particular judicatories, directing, assisting, or restraining them in the discharge of their functions; and its superintending, and controlling authority, maintains soundness of doctrine, checks irregularity, and enforces the observance of general laws throughout all the districts of the church."

"The settlements of vacant parishes have furnished the most important occasions for calling forth the executive powers of the General Assembly. Ever since the establishment of the church of Scotland, and particularly since patrons were restored to their ancient rights by the act 1712, presbyteries, even when they did not find any defect in the personal qualifications of the presentee, have often, from a supposed deficiency in his call, from regard to the wishes of the people, or from some local circumstances, delayed, or even refused to settle him. When the matter is

* "Assemblies 1711, 1719, 1731, 1737, 1739, 1742, &c."

brought before the General Assembly, that supreme court, if satisfied that the conduct of the presbytery was not warranted by the laws of the church, interposes its authority, and enjoins them to proceed with all convenient speed, according to the rules of the church, to receive and admit the presentee minister of the vacant parish. If the reluctance discovered by the members of the presbytery appears to be such, that they cannot safely be trusted with any discretionary powers, the General Assembly appoints the particular days of their meeting, in order to take the steps previous to the settlement, prescribes the whole course of their procedure, and constitutes them, in that particular case, the ministerial officers of the General Assembly, who are not allowed to exercise their own judgment, but are required implicitly to obey the instructions given by their superiors. As the existence of the society depends upon the maintenance of this paramount authority, ministers have often been censured, and sometimes deposed, when, setting their own judgment in opposition to that subordination which the constitution implies, and which their solemn promise at the time of their admission bound upon their conscience, they have finally refused to comply with the orders of the supreme executive power."*

The business which the Assembly is unable to overtake, it refers to the commission.

The minutes of the last sederunt are read before its close, that they may receive the sanction of the Assembly, in the same way as the minutes of former se-

* Hill's View of the Constitution, pp. 84—95. 109—113. 117. 119—121. Act 5, Assembly 1733, *et sequentia*. Assembly 1750, Session 9.—Presbytery of Linlithgow. Act 4, Assembly 1752. Assembly 1774, Session 7, and Assembly 1775, Session 5.—St. Ninians. Assembly 1790, Session 4.—Presbytery of Paisley. Assembly 1803, Session 5.—Presbytery of Tain.

derunts, which are always read at the opening of the meetings subsequent thereto.

A committee is appointed to revise the minutes of Assembly, and to select from its acts such as are of general concern, that they may be printed. A great improvement has been recently made by this committee, acting under the orders of the Assembly, in giving, in the printed abridgment of the Assembly's proceedings, a fuller detail of the cases which come before it, so as to convey a distinct idea of the grounds upon which the decisions of the supreme ecclesiastical judicatory were pronounced.

When the business is concluded, the moderator addresses first the Assembly, and then his Grace the Commissioner, and in the name of the Lord Jesus Christ, the king and head of his church, appoints another Assembly to be held on a certain day in the month of May in the following year.

The Lord High Commissioner then addresses the Assembly, and, in the name of the sovereign, appoints another Assembly to be held upon the day mentioned by the moderator.

Intimation of this appointment is publicly given, and the Assembly is concluded with prayer, singing of psalms, and pronouncing the blessing.

SECTION VI.

THE COMMISSION OF THE GENERAL ASSEMBLY.

THE Commission of the General Assembly is somewhat similar to a committee of the whole house. It

is composed of all the members of Assembly, with the addition of one minister, who is named by the moderator. Those also, whose commissions to the General Assembly were rejected for some informality, are usually appointed to be members of the commission.

The commission cannot proceed to business unless thirty-one of the commissioners are present, of whom twenty-one must be ministers.

They meet within the Assembly-house, the first day after the dissolution of the Assembly; and thereafter, the second Wednesday of August, the third Wednesday of November, and the first Wednesday of March; and oftener, when and where they shall think fit and convenient. But no private processes can be determined except at the four stated diets; and what is determined at one diet of the commission, with relation to private causes, cannot be altered at any other diet thereof, but stands and continues in force till disapproved of by the General Assembly.

The commissioners have power to chuse their own moderator, and finally to determine, as they shall see cause, in every matter referred to them by the Assembly.

If their sentences are not obtempered by presbyteries or synods, they cannot execute the same themselves, by appointing correspondent meetings of the commission; but must allow them to lie over to the ensuing Assembly, to which such presbyteries or synods are answerable for their conduct in regard to the sentences of the commission.

Protests for liberty to complain against these sentences may be taken by the parties before the commission; but these protests are not held as a suf-

ficient reason to justify disobedience to the sentences of the commission on the part of the inferior courts.*

The proceedings of the commission are faithfully recorded, and submitted to the review of the next General Assembly, which attests the commission record, if approved of; or reverses the sentences of the commission, and finds, "those who concurred in them censurable, if it shall appear that they have exceeded their powers; that is, have either meddled in any other matters than what were committed and referred to them, or acted contrary to the acts and constitution of the church, or to the prejudice thereof."

"As amongst the annual instructions given to the commissioners, they receive a general direction, 'to advert to the interest of the church on every occasion, that the church and present establishment thereof do not suffer or sustain any prejudice which they can prevent, as they will be answerable,' they may find it expedient to meet oftener than at the four stated diets; and a commission is legally constituted at any time when thirty-one of the commissioners, whereof twenty-one are ministers, finding themselves assembled in any place, proceed to choose a moderator. It has been usual for the moderator of the last Assembly, upon the few occasions when an extraordinary meeting of the commission has been held, to give public notice, at the desire of some members, of the day upon which it appears to them expedient to meet. But there is no reason to think that the moderator of the last Assembly, by withholding his compliance with

* Assembly 1750, Session 9.—Presbytery of Kirkcaldy.

that request, can restrain the commission from meeting, or that it would be incompetent for the commissioners to act, although circumstances should prevent a quorum of their number from assembling at the very day which he had named."*

* Hill's View of the Constitution, pp. 122, 123.

APPENDIX.

THE PRESBYTERY

ACTING

IN A CIVIL CAPACITY.

Church. THE jurisdiction of presbyteries in the building and repairing of churches has been exercised for a long period of time; and, although questioned in some instances, was completely established in the important case of Dunning, 1807, and has not since been objected to.

When a church has become ruinous, the minister of the parish applies, by petition, to the presbytery of the bounds, to hold a meeting in his parish, for the purpose of inspecting the church, and taking the necessary steps for having it rebuilt. The presbytery appoints a visitation of the parish to be held, and enjoins that edictal intimation of that appointment be made from the pulpit, that letters be written to acquaint non-resident heritors, and skilful tradesmen be warned to attend on the day of meeting.

It is usual for the minister to give notice of the meeting by letter to absent heritors; but it does not appear that there is an actual obligation on him to do so. It is presumed, however, that the presbytery will not grant the prayer of his petition, if he has not previously corresponded with his heritors on the subject.

In most cases the application for a meeting of presbytery is with the concurrence of one or more of the heritors of the parish; and it is always desirable that it should be so. But the presbytery is warranted to proceed, although the minister alone commences the suit. Tingwall, 1787. Dunning, 1807.

The tradesmen are often selected by the minister. Sometimes they are expressly named by the presbytery. It is right that the heritors should be satisfied with regard to the tradesmen employed, and should nominate, if they choose, one or more for themselves. The expense incurred by the attendance of the tradesmen devolves upon the heritors.

When the presbytery meets, the tradesmen are put upon oath, and desired to inspect the church, and to say whether a new one is necessary or not. This report is made out in writing, and subscribed by them. If they condemn the church, the presbytery, upon their report, pronounces a sentence to that effect, and orders plans, and specifications, and estimates, to be given in by the heritors. Of all these the presbytery must judge. They may also, on failure of the heritors to produce them, procure plans and estimates themselves. Anwoth, 1812.

It is usual to leave it to the heritors to contract with a builder, and to carry on the work under their own inspection; and they are so much interested in

having the work well done, that it may be considered safe, as well as courteous, for the presbytery to make an appointment to that effect. But the presbytery has the power to contract; and in the cases of Muirkirk, Falkirk, and Dunoon, when the heritors were tardy in their proceedings, the Court of Session authorized the respective presbyteries, in the event of their continuing to be dilatory, to carry on the buildings according to the plans that had been approved of.

It is the presbytery also which assesses the heritors for the sum required, and appoints both a collector to uplift it, and the instalments in which it is to be paid. The assessment includes what is necessary for defraying the expense of plans and specifications, remunerating the tradesmen for their attendance, and giving a fee to the presbytery clerk. These different items are particularly mentioned.

In fixing the assessment, it is not an unusual mode to take some one of the estimates given in as a ground for judging of the probable amount that will be required, and to decern against the heritors for a sum which shall not exceed that amount. But in a recent case, Kilmalcolm, it appears that the presbytery of Paisley have been required to alter their decree against the heritors of that parish, because it proceeded not upon a real, but only upon a probable estimate. In consequence of this decision of the Court of Session, presbyteries will henceforth have to see that the estimates, which are laid upon their tables, are such as those who give them will be ready to act upon, if they are contracted with; and their decernitures must be, not for a sum which will probably cover the whole

expense, but for the sum which will be actually required.

The presbytery has the power of determining the site of a new church. But a change of situation should not be made without strong grounds. Falkirk, 1809.

The size of a new church it is an important matter for the presbytery to settle. The judgment in the case of Tingwall, 1787, lays down the rule to be followed. Two-thirds of the examinable persons in a parish, *i. e.* of such as are twelve years of age, must be accommodated; and each person is considered as requiring 18 inches for sitting-room.

When the building is finished, the presbytery meet again at the request of the minister of the parish, and tradesmen are appointed to inspect it, and to report if the work is rightly executed. If their report is favourable, the church is taken off the contractor's hands; if otherwise, the presbytery delays its final procedure, till the deficiencies pointed out are supplied.

When a church stands in need of repairs, the proceedings throughout are exactly of the same kind with those which have been described above.

Notwithstanding the decisions which have been given in the cases of Dunning and Lerwick, doubts are entertained of the competency of a presbytery to order the enlargement of a church, when it is not positively ruinous, however insufficient it may be to accommodate two-thirds of the examinable persons of the parish. The question of competency is considered as never having been fairly tried; and the doctrine, which, in the meantime, is maintained upon the sub-

ject, is, that a presbytery has no right to order the enlargement of a church, except when the church is to be rebuilt.*

* One consequence of this uncertainty about the power of presbyteries to add to the provision which already exists for giving attendance on the ordinances of religion, is, a lamentable deficiency of church accommodation throughout the country. Parish churches were originally built for a population very much inferior in numerical extent to that which now covers the face of the land; and they can admit only a small proportion of those, to whom it is of the utmost importance that religious instruction should be regularly addressed. It is a very inefficient remedy which Chapels of Ease supply. They cannot be supported without considerable funds; and in how many quarters, where thousands are perishing from lack of knowledge, is it utterly impossible that the requisite funds can be raised? The same circumstance operates as a powerful check upon the erection of dissenting meeting-houses; so that, however earnest in the dissemination of religious instruction dissenters may be, they are still insufficient to minister to the spiritual wants of multitudes in every town, but especially in manufacturing districts, who have no place of worship to attend, and to whom the truths of Christianity, and its sacred obligations may be said to be wholly unknown. This is a state of things which ought to awaken the attention of every thinking man. It is melancholy and distressing in respect of those, who, though living in a Christian land, are debarred from the means and opportunities of religious instruction, and are allowed to pass through the world, and to quit it, without Christ, without God, and without hope. It is fearful in respect of our country, which thus contains in its bosom congregated hosts, to whom the precepts of religion have never been addressed, and who neither feel, nor even outwardly acknowledge, the salutary restraints, by which it checks the wickedness of man, and gives to human laws most powerful support. Individual exertion, contributions in money, the adoption of plans for the erection of places of worship, may do somewhat to lessen the evil that exists in consequence of the vast disproportion between the population of the country, and the accommodation provided for their receiving religious instruction. No means should be neglected, however trifling it may seem, by which this object can be advanced. But if public worship is of service to the community by the sentiments which it cherishes, and the habits which it forms, it is the government, above all, which is interested in correcting the existing evil. It is government, too, which alone, by revising the laws respecting the erection of churches, and by grants

When a presbytery has given a decision in a case respecting the building or repairing of a church, it cannot appear as a party in the Court of Session in support of its own judgment. Falkirk, 1807.

The churchyard wall comes under the jurisdiction of the presbytery; and the proceedings in regard to it are similar to those which have been mentioned in regard to the church.

In the matter of churches, as well as of manses and glebes, it is of great importance for presbyteries to preserve a good understanding with the heritors, and, if possible, to obtain their concurrence; and it will often happen that, in the exercise of a prudent discretion, they will find it advisable, for securing the object in view, not to press it at a time which may be peculiarly inconvenient for those upon whom it is to

of money, can do any thing effectual for increasing the size and the number of our churches; and its attention, notwithstanding what has been done for the Highlands of Scotland, cannot be too urgently called to the want of church accommodation which is felt, particularly in the western counties. The resources of the country are not so far spent as to be incapable of affording any relief from this great and growing evil. And to what purpose can they be more fitly applied, than in training the people to be pious and moral, furnishing them with the best qualifications for the proper discharge of their duties, and teaching them those truths, which will dispose them, even under the severest trials, to "lead a quiet and peaceable life in all godliness and honesty?"

One boon to the Lowlands of Scotland the government was willing to have given. But the diversity of opinion, which prevailed respecting the arrangements that were to follow, prevented it from being bestowed. This is unhappy, as it may render government less willing to attend to the wants of the country, and more inclined to suppose that these wants, which appeared to be forgotten in the opposition that was made to the plan for relieving them in part, cannot be very grievously felt. But it should be a lesson for the future. The object in view is so important, that almost any concessions should be made to attain it.

lay an additional burden, and even to make concessions respecting it, which do not compromise the rights, or injure the interests of the church.

When opposition is made to just claims by any of the heritors of a parish, a presbytery cannot be too particular in having all its proceedings, relative to these claims, strictly conformable to law.

Manse. The jurisdiction of presbyteries in the case of manses is still more fully acknowledged than in that of churches.

When a new manse is required, the same preliminary steps are to be taken as have been described in regard to a new church. The report of tradesmen upon oath is the ground of the presbytery's finding a new manse to be necessary. Plans, &c. are in consequence ordered to be given in, a contract is entered into, and a decree is pronounced against the heritors for the sum necessary to defray the expense of the building, and the other contingent expenses.

In the case of manses, as of churches, a presbytery may proceed notwithstanding the absence of the heritors. Lochmaben, 1712.

It belongs also to the presbytery to fix the site of a new manse.

Presbyteries have no definite rule to guide them with regard to the sum for which they should decern against the heritors, when they find a new manse to be necessary. The act 1663 enjoined, that the expense of a manse should not exceed L.1000 Scots. But since the decision of the Court of Session in the

case of Inverury, 1760, the statutory allowance has not been adhered to, and such manses have been given to ministers as were suited to their benefices, without regard to the precise amount of the expense. The improved style of accommodation throughout the country, and the kind of manses obtained by neighbouring clergymen, have always been taken into consideration.

The right to a manse includes, not only the right to a dwelling house, but also the right to a garden, a stable, a barn, a byre, and other accommodations for the family of one who occupies some acres of ground. These all come under the jurisdiction of the presbytery. Half an acre of ground is allowed for the garden, and the site of the manse and offices. The presbytery has power to decern for a garden wall.

When repairs are needed, the same steps are taken as when a new manse is to be built. The extent of the repairs that are ordered is determined by the report of tradesmen.

It is not unusual, at the time of granting repairs, to make additions to a manse which is small or deficient in accommodation. The proposal of such additions comes with best grace from the heritors themselves, or at least with their concurrence. It rarely happens that moderate additions, which are only designed to make the manse a comfortable residence for the minister, are objected to by the heritors of a parish; and the cases of Cathcart, Kirkliston, and Anwoth, show, that such additions, although not expressly warranted in terms of law, are agreeable to the principles which have long guided the decisions of the Court of Session in all matters affecting the civil interests of the clergy.

Heritors may insist, when a new manse has been built, or when an old one has been completely repaired, to have it declared free, so as to throw upon the incumbent the expense of all ordinary repairs on it, and to make him or his executors responsible to them for its state. But a presbytery must be satisfied that the manse is in all respects sufficient, before it subjects any of its members to a burden which may be a heavy one. And, notwithstanding its having done so, it will not hesitate to order a new manse to be built, or repairs to be made, by the heritors, if, through the necessary decay occasioned by time or the weather, it shall have ceased to afford a sufficient or comfortable dwelling to the minister.—Botriphnie, 1805.

Glebe. The jurisdiction of presbyteries in regard to glebes rests upon the same ground with that in regard to manses.

It belongs to presbyteries to designate glebes, and the preliminary steps for doing so are the same as in the case of building a manse. Instead of skilful tradesmen, two or three of the most knowing and discreet men of the parish, or men of that description, whether belonging to the parish or not, are to be called to the meeting of presbytery, in order to ascertain the measurement and the quality of the ground designed.

Four acres of arable ground have, from 1572, been the minimum legal allowance for a minister's glebe; and it is provided by the act 1606, that, where there is no arable ground, sixteen soums of grass shall be given for a glebe, a soum of grass being as much as will pasture ten sheep, or one cow.

Originally, it was only out of church-lands, or lands which had belonged to the church, that the designa-

tion could be made; and of these lands, such as were *maist ewest* and adjacent to the kirk were to be designed. Between 1644 and 1663 temporal lands also were made liable to the designation, relief being given from the whole heritors of the parish to the heritor from whose property the glebe was taken. In 1663, the acts which made temporal lands subject to the designation were rescinded; but it does not appear that the designation of a glebe out of temporal lands, when there were no church-lands in a parish, was ever objected to. A difference of opinion prevailed, as to whether temporal lands could be designed when there were church-lands in the parish; but latterly, the distinction between the two kinds of lands has been completely disregarded in the designation of glebes, the heritors, whose lands are designed, being entitled to proportional relief from the other heritors of the parish.—Kingsbarns, 1799.

If the glebe of a minister is deficient in the legal extent, the presbytery, at his request, and after the proper preliminary steps have been taken, may design as much land as will make up the deficiency. It may do the same also, if the half acre allowed for the manse and garden is deficient. But neither in these cases, nor when the quality of the land, of which a glebe is composed, is bad, is a presbytery entitled to make a new designation of the whole glebe.

In designing a glebe, a presbytery must keep in view that the interest or conveniency of the minister is not the only thing to be attended to. It is provided by statute, that the glebe should be near the manse. But other considerations must also be taken into account in designing it. In the case of Dunfermline, 1813, when the presbytery designed for a glebe four different portions of ground, all situated near the

church, but some of them at a considerable distance from each other, the designation of presbytery was set aside by the Court of Session, and a remit was made to the sheriff of the county to inspect the grounds, and report with respect to another situation for a glebe.

Excambions of glebes must be sanctioned by the presbytery. But even the sanction of the presbytery does not give validity to the alienation by an incumbent of either glebe or manse.—Falkland, 1793.

The minerals of a glebe are worked at sight of the heritors and presbytery, and the proceeds are placed under their management for behoof of the incumbent for the time.

Grass Glebe. Ministers who are entitled to an arable glebe, that is, all ministers who have a landward parish, are also, by acts 1649 and 1663, allowed to have grass for one horse and two cows, over and above their glebe.

It belongs to presbyteries to design the grass glebe, and the proceedings in regard to it are the same with those which are followed in regard to the arable glebe.

In designing a grass glebe, the presbytery must take only church land. When there are no church lands, the act 1663 ordains the sum of L.20 Scots, or L.1, 13s. 4d. Sterling, to be paid yearly to the minister in lieu of a grass glebe. This small sum, so disproportioned now to the purpose for which a grass glebe is given, the presbytery has no power to increase.

The difficulty in regard to grass glebes arises from the nature of the land that must be designated. Not only must the land be church land, it must also be not arable, but in a state of pasturage. What are arable and what are pasture lands it is not always easy to determine. But the principle which, in general, seems to have guided the decisions of the Court of Session upon this subject is, that wherever lands are in a state proper for arable cultivation at the time of designation, they are not liable to be designated.

A presbytery is not prevented from designing a grass glebe although the arable glebe exceeds four acres, or contains in it pasture land as well as arable. Four acres is the smallest legal allowance for a glebe, and it is easy to suppose that a larger allowance may, in many instances, have been given, or that what is now the arable glebe may be larger from the incumbent's having originally had sixteen soums of grass awarded to him as his glebe, and from the land which was then only fit for pasture having been brought by cultivation into a proper state for tillage. The only point for a presbytery to ascertain is, whether or not a grass glebe, or the L.20 Scots in lieu of it, was already given.

Stipend. When a minister applies for an augmentation of his stipend, he is required by act of Parliament 1808, not only to cite the heritors of his parish, but also to cite the moderator and clerk of the presbytery of the bounds, and to furnish them with a statement of the amount of his present stipend.

and of the addition to the stipend which he means to crave, in order that the presbytery, if they shall judge proper, may appear as parties in the process. If the presbytery does not enter an appearance, the minister must forthwith transmit to the moderator or clerk of the presbytery a certified copy of the interlocutor pronounced by the Court. And it is competent for the presbytery to enter an appearance within five months after such interlocutor is pronounced, and to show, if they shall see cause, that the decree of modification which has been pronounced is collusive and prejudicial to the benefice. When the presbytery enters an appearance in a process of augmentation, it is competent for the Court to subject the minister, insisting in such process, in the whole, or any part of the expenses incurred by the presbytery.

Schoolmasters. By the laws of the church all schoolmasters and teachers of youth are amenable to the ecclesiastical judicatories for their conduct and doctrines. These laws are confirmed by act of Parliament. By the act 1803 the judgment of presbyteries in regard to the conduct of schoolmasters is declared to be final. If they proceed to deposition, the sentence is rendered effectual by the sheriff of the county. They must proceed by libel, and although their sentence is final, yet to render it valid the previous steps must be regular and properly taken.

In the event of a vacancy in the offices both of minister and of schoolmaster of a parish, it is the presbytery which appoints a meeting of the heritors to

elect a schoolmaster, and when the heritors and minister fail to elect one within four months from the date of the vacancy, the presbytery is required to apply to the commissioners of supply, who have power to elect a schoolmaster *jure devoluto*, at a meeting called by the convener upon thirty days notice.

The schoolmaster, when elected, brings to the presbytery the minutes, or an extract or certified copy of the minutes of his election, and attestations of his having taken the oaths to government. He is examined by the presbytery as to character and sufficiency for the office. They see him sign the Confession of Faith, or formula of our Church, and provided they are satisfied with his qualifications, they furnish him with an extract from their minutes, bearing that he had appeared, produced the attestations required, and been found qualified for discharging the duties of the office to which he had been elected. This extract completes his right to the emoluments of his office.

If the person elected is not found duly qualified, the judgment of the presbytery cannot be reviewed or suspended by any other Court, and the heritors and minister must proceed to a new election which they are required to complete within the four months from the date of the vacancy.

Presbyteries have power to correct what is wrong in the hours of teaching in parish schools, and the length of vacation that is annually given.

LIST

OF

ACTS OF ASSEMBLY REFERRED TO.

Act	1596.	Visitations Presbyterial of Parishes.
—	1638.	Session Books to be tried by Presbyteries.
—	1639.	Gradation of Courts to be observed in making appeals.
—	1642.	Transportation.
—	1643.	Gradation of Courts to be observed on making references.
—	1644.	Dissents.
— 10,	1646.	Visitations Presbyterial.
— 4,	1694.	Time of lodging Commissions.
— 5,	——	Commissioners to General Assembly.
— 6,	——	Transportations.
— 8,	——	Appeals.
— 3,	1697.	Enrolling names of Probationers.
— 9,	——	Barrier Act.
— 11,	1698.	Subscribing of Synod Records.
— 4,	1699.	Annexation of Parishes.
— 9,	1700.	Revising of Registers.
— 11,	——	Subscribing the Confession of Faith.
— 13,	1703.	Disjunction of Parishes.
— 7,	1704.	Citations in Transportations.
— 8,	1706.	Revising of the Commission Record.
— 9,	——	Anent Registers.
— 16,	——	Visitations Presbyterial.
— 10,	1707.	Erection of Presbyteries.
— 11,	——	Form of Process.
— 15,	——	Against Innovations in the Worship of God.

Act 6, 1708. Suppressing Schisms and Disorders in the Church.
— 10, 1711. Questions to Ministers and Probationers, and Formula.
— 4, 1712. Concerning admission of Infants to Baptism.
— 6, 1712. Commissioners to General Assembly.
— 9, 1722. Duty of Elders and Deacons.
— 5, 1724. Erection of Presbyteries.
— 5, 1732. Appeals in Settlements.
— 9, 1736. Lists of Probationers to be presented to the Assembly.
— 4, 1739. Anent Ministers who seceded from the Church.
— 4, 1744. Separate Register.
— 9, 1745. Form of Process applied to Probationers.
— 4, 1753. Anent Lawyers who are Members of Court.
— 4, 1753. Anent Missionary Ministers as Members of Assembly.
— 5, 1754. Ministers by Ordination or Admission Members of Presbytery and Synod.
— 4, 1757. Separate Register.
— 8, 1759. Against Simony.
— 6, 1761. Anent taking a Blind Student on Trials.
— 6, 1763. Anent applications for the public money.
— 12, 1776. Anent Ruling Elders.
— 9, 1779. Anent Ordination, and licences obtained without the bounds of this Church.
— 8, 1783. Anent Lawyers who are Members of Court.
— 10, —— Forms of Commissions.
— 7, 1784. Interim Act anent Ordained Assistants.
— 9, —— Ordination without relation to a particular charge.
— 5, 1799. Anent unqualified Ministers and Preachers.
— 12, —— Presbyterial Examination of Schools.
— 5, 1806. Ordained Assistant and Successors.
— 8, 1813. Probationers.—Trials for Licences.
— 10, 1816. Ruling Elders.
— 6, 1817. Anent Union of Offices.
— 7, 1820. Presbyterial Examination of Schools.
— 8, —— Anent Vacant Parishes.
— 8, 1826. Anent Attendance at the Divinity Hall.
— 10, —— Chapels of Ease.
— 7, 1827. Examination of Students by Presbyteries before entering the Hall, and during their attendance on it.

INDEX.

Admission of a minister to a parish, 62, 65—makes the minister a member of the Presbytery and Synod of the bounds, 66.
Agents, not allowed in Sessions, 24—but in the higher courts, 36.
Appeal, must be made immediately, 23, 34—reasons of, must be lodged in ten days, 24, 35—effect of, *ib.*—when frivolous, 36.
Assembly, General, time of meeting of, 81—number of members of, *ib.*—commissions to, when lodged and examined, *ib.*—election of moderator and clerks, 84—appointment of committees of, 85—time of their meeting, *ib.*—receiving their reports, 87—arrangement of business of, *ib.*—its legislative power, 89—its executive, 90.
Assistant, ordained, not constituent member of Session, 3—presides only in room of the minister, 4—a member of the other church courts only in his absence, *ib.*

Business of Kirk-Sessions, 9—Presbyteries, 40—Provincial Synods, 76—General Assembly, 88.

Call, moderating in a, 57—signatures to, *ib.*—concurrence of Presbytery with, *ib.*—accepted by presentee, 58.
Certificates of character granted by Kirk-Sessions, 9—from Professors of Divinity for students upon trials, 41.
Chapels of Ease, petitions for addressed to Presbyteries, 66—whole proceedings relative to, submitted to General Assembly, *ib.*—constitution of, 67—ministers of, not members of church courts, 68.
Church, proceedings of Presbytery relative to, 97—when it is to be rebuilt or repaired, 100.
Church-yard wall, 102.
Circular Letters, when written, 43.
Citation, to parties or witnesses before a Kirk-Session, by whom issued, 14—how drawn up, *ib.*—how delivered, 15—how often repeated, *ib.*—what peremptory, *ib.*—to a minister by a Presbytery, 50.
Committees, for overtures and bills, 77, 85.
Communicants, how admitted, 12.
Complaint, by whom made, 23, 32—effect of, *ib.*—reasons of, *ib.*
Contumacy, how it is noticed, 15.
Counsel, must not be members of court, 36.

Demission, Presbytery elder's, 28—minister's, not accepted when he has followed divisive courses, 54.
Deposition of minister, act of, preceded by prayer, 53—not executed by a Presbytery in absence of the party, 54.
Discipline, subjects of, 13—how administered, 20—public appearances, *ib.*
Dissent, by whom, and when given in, 23, 30—effect of, *ib.*—reasons of, how disposed of, 31.
Dissenting teachers, when desiring to be taken on probationary trials, 46.

Edict, nature of, 6—time of serving, for elders, *ib.*—for ministers, 59.
Elders, number of in a parish, 4—qualifications of, 5—how elected, *ib.*—in the case that there is no Session, 8—questions put to them before ordination, 7, 8—from another parish, 9—non-residing, *ib.*—when elected for Presbytery or Synod, 28—for General Assembly, 71.
Evidence, how taken, 16—in Presbytery, 51.
Examination, of students, before entering the Divinity Hall, and during their attendance upon it, 40—for probationary trials, 42.
Excommunication, lesser, inflicted by Session, 21—greater, not without the direction of the Presbytery, *ib.*—how relieved from, *ib.*
Execution of summons, must be returned to the Session, 14—to the Presbytery, 50.

Fama clamosa, rise, occasion, broachers, and grounds of, must be inquired into, 47—no libel can be served on a minister unless there is one against him, *ib.*
Formula, for elders, 8—for probationers and ministers, 46.
Fugitives from discipline, who are, 22—how treated, *ib.*

Glebe, proceedings of Presbytery relative to, 105—when designation to be made, *ib.*—arable glebe, *ib.*—excambion, 107—grass, *ib.*

Jottings, whether extracts allowed from, 37.
Jus devolutum, when it takes place, 56.

Keys of church, with whom lodged when a parish is vacant, 56.

Letter of acceptance, when given in, 56.
Libel, at whose instance raised, 47—when by the Presbytery, *ib.*—how drawn up, 49—by whom subscribed, *ib.*—copy of, to be given to the minister, *ib.*—original one not to be withdrawn for a new one, 50—relevancy of, to be first discussed, *ib.*—irrelevancy of some parts does not stop procedure upon others, 51—consequences of, when proven, *ib.*—when it respects smaller things, *ib.*

Licence, trials for, 42—extract of, to be furnished, 45—obtained without the bounds of this church disqualifies a presentee, 59.

Manse, proceedings of Presbytery relative to, when it is to be rebuilt, 103—or repaired, 104—or added to, *ib.*
Meeting, times of, of the Kirk-Session, 1—the presbytery, 73—the Synod, 75—the General Assembly, 81—the commission, 93—Pro re natâ of the Presbytery, 74—of the Synod, 80.
Members of Assembly, when elected, 71—commissions to, 72—their number, 81.
Minutes, how to be kept, 26—how revised, 77, 88—whether signed, 27, 88.
Missionaries, on the royal bounty, not members of church courts, 69.
Moderator, of Kirk-Session, 2—of Presbytery, 39—of Synod, 76—of the General Assembly, 84—of the commission, 93.

Oath, of purgation, 17—woman's oath not allowed to be taken, 19.
Ordination of elders, 6—of ministers, 60—to a parish, makes the minister a member of the Presbytery and Synod, 66—without relation to a particular charge, *ib.*—of a minister going to foreign parts, *ib.*
Overtures, deliverance upon, 70.

Patron, must qualify to government, 56.
Petitions, how to be drawn up, 28.
Presbytery, how erected, 38—of whom composed, 39—its business, 40—times of meeting of, 73.—necessary to appoint next meeting of, *ib.*—pro re natâ meeting of, 74.
Presentation, within what time to be lodged, 56—in whose favour to be given, *ib.*—cannot be objected to by heritors, *ib.*
Presentee, his qualifications, 56—letter of acceptance, *ib.*—appointed to preach in the vacant parish if a probationer, 57—required to signify acceptance of the call, 58—whether proceedings are sisted in case of the presbytery being dissatisfied with his moral conduct or his doctrinal sentiments, *ib.*
Presumptions of guilt, what are, 17.
Privileges, church, granted by the Kirk-Session, 11—cannot be refused merely on suspicion of improper conduct, or ignorance of particular views of christian doctrine, *ib.*
Privy censures, 79.
Probationers, to be registered, 47—amenable to Presbyteries, and not to Kirk-Sessions, *ib.*
Process, what admitted as the ground of, 13—against a minister or probationer cannot be commenced in a Kirk-Session, 47—caution to be exercised in entering upon such a process, *ib.*—when to be instituted by a Presbytery without a private party, *ib.*

Processes to be referred by the Kirk-Session to Presbytery, 19.

Qualifications of elders, 5—of students proposed for trials, 41—of a presentee to a parish, 58.
Questions to elders, 7—to probationers, 44—to ministers, 60.

Reasons, of appeal, must be lodged in order to the prosecution of the appeal, 24—of complaint also, 32—of dissent, how disposed of, 31.
Reference, of what it should be, 22—how to be made, 23, 29—situation of those by whom it is made in the court referred to, *ib.* how disposed of, *ib.*
Register, separate, 70.
Registers, how to be kept, 26—and revised, 88.

Scandals, what noticed as such, 13—prescribe in five years, *ib.*—cannot be revived after a final decision upon them, *ib.*—may be a subject of private admonition rather than ground of process, ib —where noticed, 14.
Schoolmasters, examined by presbyteries, 110—proceeded against by libel in case of improper conduct, 109—judgment of the presbytery final, *ib.*
Stipend, amount of augmentation sought, to be stated to the presbytery, 109—presbytery to enter an appearance in a case of augmentation, *ib.*—and after the interlocutor has been pronounced, *ib.*
Students, examined by a presbytery, 40—proposed for trials, 41—from universities out of this church, 46.
Supplies to vacant parish, how given, 2, 55.

Translation, mode of proceeding in order to, 63.
Trials, for licence, 42—may be transferred, 47—for the ministry, 58—procedure in regard to, when they are not satisfactory, 59.

Union of offices, 65.

Vacant parish, from what time declared to be so, 55—how supplied, *ib.*
Visitation Presbyterial, how conducted, 52.
Vote, casting, 4—how taken in the General Assembly, 89.

Witnesses, how summoned, 15—list of to be given to party accused, *ib.*—how sworn and examined, 16—in the case of a libel, 50.

FINIS.

INDEX

9.1

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